UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1993/24
12 January 1993

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-ninth session
Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Working Group on Arbitrary Detention

CONTENTS

		Paragraphs	Page
Introduction		1 - 4	3
I.	ACTIVITIES OF THE WORKING GROUP	5 - 18	4
A.	Cooperation with the Commission on Human Rights	6	4
B.	Cooperation with government representatives	10	6
C.	Cooperation with non-governmental organizations	11	6
D.	Communications with Governments	12 - 18	7
II.	"DELIBERATIONS" OF THE WORKING GROUP	19 - 20	8
	Deliberation 01		9
	Deliberation 02		9
	Deliberation 03		14
	Deliberation 04		16

CONTENTS (continued)

		Paragraphs	Page
III.	DECISIONS ADOPTED BY THE WORKING GROUP	21 - 22	20
IV.	GENERAL CONCLUSIONS AND RECOMMENDATIONS	23 - 43	22
	A. General conclusions	23 - 42	22
	B. Recommendations	43	25

Annexes

I.	Decisions adopted by the Working Group	
	Decision No. 1/1992 (Islamic Republic of Iran)	27
	Decision No. 2/1992 (Lao People's Democratic Republic)	29
	Decision No. 3/1992 (Libyan Arab Jamahiriya)	32
	Decision No. 4/1992 (Malawi)	34
	Decision No. 5/1992 (Sudan)	35
	Decision No. 6/1992 (Syrian Arab Republic)	38
	Decision No. 7/1992 (Peru)	40
	Decision No. 8/1992 (Myanmar)	43
	Decision No. 9/1992 to No. 33/1992 (Cuba)	46
	Decision No. 34/1992 (Mexico)	75
	Decision No. 35/1992 (Uganda)	75
	Decision No. 36/1992 (Israel)	76
	Decision No. 37/1992 (Sudan)	77
	Decision No. 38/1992 (Morocco)	79
	Decision No. 39/1992 (Malaysia)	81
	Decision No. 40/1992 (Saudi Arabia)	82
	Decision No. 41/1992 (Chile)	84
	Decision No. 42/1992 and 44/1992 (Cuba)	84
	Decision No. 48/1992 (Burundi)	91
	Decision No. 49/1992 (Lao People's Democratic Republic)	94
	Decision No. 50/1992 (Côte d'Ivoire)	94
	Decision No. 51/1992 (Tunisia)	94
	Decision No. 54/1992 (United Republic of Tanzania)	97
II.	Decision on cases of reportedly released detainees and list of such persons	97
III.	Statistics	100
IV.	Revised methods of work	102

Introduction

1. At its forty-seventh session, the Commission on Human Rights adopted resolution 1991/42, entitled "Question of arbitrary detention", by which it decided to create, for a three-year period, a working group composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned. The Commission requested the Working Group to present a comprehensive report to it at its forty-eighth session.

2. The Working Group presented its first report (E/CN.4/1992/20) to the Commission at its forty-eighth session, as requested, describing its views on its mandate, its methods of work and principles applicable in the consideration of cases submitted to it and the first initiatives taken by it since its first session, held in September 1991, including the identifying of a number of legal situations which it decided to consider in its following sessions. Due to the late date of the Working Group's creation and the fact that it did not hold its first session until late September 1991, the Working Group's first report did not include final conclusions and recommendations concerning the cases which had been submitted to it.

3. At its forty-eighth session, the Commission adopted resolution 1992/28, entitled "Question or arbitrary detention", by which it, inter alia, took note of the report of the Working Group on Arbitrary Detention (E/CN.4/1992/20), invited the Working Group to continue to take account of the need to carry out its tasks with discretion, objectivity and independence, and requested the Working Group to submit a comprehensive report on its activities to the Commission at its forty-ninth session and to make any suggestions and recommendations enabling it better to carry out its task.

4. In conformity with paragraph 5 of Commission resolution 1992/28, the Working Group hereby presents its second report to the Commission. Chapter I of the report describes the activities of the Working Group since the publication of its first report to the Commission, putting the emphasis on the cooperation it established with the Commission on Human Rights, and in particular with other special rapporteurs of the Commission, with representatives of Governments and with non-governmental organizations. This section also contains data on the number of communications and cases submitted to Governments during the period covered by this report, the number of replies received, the number of urgent appeals sent and their results. Chapter II deals with the category of decisions taken by the Working Group where, in considering individual cases, it finds that they are cases of deprivation of freedom that are general in scope. The decisions in this category are called "deliberations". These deliberations deal with questions of principle such as house arrest and arbitrary detention, the admissibility of communications and exhaustion of domestic remedies, evaluation of national law as compared to the international standard the Working Group's mandate with regard to deprivation of freedom subsequent to conviction, etc. Chapter III of the report describes the general framework in which the Working Group adopted decisions on individual cases submitted to it, and the various elements used in the drafting of these decisions. Chapter IV contains the Working Group's general

conclusions and recommendations. Annex I contains the decisions adopted by the Working Group on individual cases submitted to it. Annex II contains a decision regarding cases where the persons concerned are no longer in detention, and the list of those persons. Annex II contains statistical data regarding the total number of cases dealt with by the Working Group since its creation, as well as a breakdown of the types of decision taken by the Working Group. Annex III contains the Working Group's methods of work, as revised and amended by the Group.

I. ACTIVITIES OF THE WORKING GROUP

5. The activities described below refer to the period March to December 1992, when the present report was finalized. During this period the Working Group held three sessions: its third, fourth and fifth, from 23 to 27 March, from 28 September to 2 October and from 2 to 11 December 1992, respectively.

A. Cooperation with the Commission on Human Rights

6. In its first report to the Commission (E/CN.4/1992/20, para. 20) the Working Group stated that it had decided to act in a spirit of cooperation and coordination with other relevant United Nations bodies and, in particular, with special rapporteurs of the Commission and the Sub-Commission and with the treaty monitoring bodies. During the period covered by the present report this spirit of cooperation and coordination manifested itself at three different levels: (i) exchange of information with other special rapporteurs of the Commission; (ii) participation of the Chairman-Rapporteur of the Working Group in field missions by a country-oriented special rapporteur of the Commission; and (iii) activities in connection with certain resolutions adopted by the Commission on Human Rights at its forty-eighth session.

1. Exchange of information with other special rapporteurs of the Commission and contacts with relevant United Nations human rights bodies

7. In considering cases of alleged arbitrary detention submitted to it, and especially in the preparation and drafting of the final decisions on such cases, the Working Group took note, whenever the country concerned was also the object of a study by a country-oriented special rapporteur of the Commission, of the findings and other references made by those special rapporteurs regarding the cases considered by the Working Group (cf. Decisions Nos. 9/1992 to 33/1992 concerning Cuba in annex I of this report). The Working Group also took into consideration findings and references by other thematic special rapporteurs of the Commission dealing with the same case (cf. Decision No. 7/1992 concerning Peru, paragraph 6(g) of which takes note of the reference made by the Special Rapporteur of the Commission on the question of torture). Likewise, when the Working Group came across information which it deemed should concern another special rapporteur, it transmitted such information to the special rapporteur concerned (cf. Decision No. 38/1992 concerning Morocco). The Working Group further continued to exchange views, when it deemed it to be necessary, with members of the secretariat servicing treaty monitoring bodies, in particular the Human Rights Committee, or studying other areas relevant to the Working Group's mandate.

2. Participation of the Chairman-Rapporteur of the Working Group in field missions

8. In keeping with the provisions of the Commission resolution 1992/S-1/1 on the situation of human rights in the territory of the former Yugoslavia, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, Mr. L. Joinet, was invited by the Special Rapporteur of the Commission, Mr. T. Mazowiecki, to accompany him, together with other thematic special rapporteurs and representatives, on his two field mission to the former Yugoslavia. In conformity with the resolution, Mr. Joinet informed the Special Rapporteur about his findings and the latter included that information in his reports to the Commission on Human Rights and to the General Assembly.

3. Activities in connection with certain resolutions adopted by the Commission on Human Rights at its forty-eighth session

9. At its forty-eighth session the Commission on Human Rights adopted a number of resolutions concerning all special rapporteurs and working groups of the Commission. Among those resolutions, the one most pertinent to the work of the Working Group is resolution 1992/22, entitled "Right to freedom of opinion and expression". In paragraph 7 of that resolution, the Commission invited "the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention and Special Rapporteurs of the Commission to pay particular attention, within the framework of their mandates, to the situation of persons detained, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression". This invitation by the Commission supports the corresponding decision taken by the Working Group in adopting its methods of work. It may be recalled that one of the three categories used by the Working Group in considering whether cases of detention submitted to it have an arbitrary character or not, namely category II, consists of "cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights" (see E/CN.4/1992/20, annex I). The above-mentioned articles include, inter alia, those which protect the right to freedom of opinion and expression. The Working Group, in adopting decisions on the cases submitted to it, decided that in 32 of these cases, the detention of the persons concerned was arbitrary, since it fell within category II, and that in another 14 cases the detention was arbitrary, since it fell into two categories, including category II. Consequently, the Working Group recommended to the Governments concerned to take all the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights (see also annexes I and III of this report). Regarding Commission on Human Rights resolution 1992/37, entitled "World Conference on Human Rights", the Working Group decided at its fourth session in September 1992 that it would be represented at the World Conference by its Chairman-Rapporteur and that it would further examine its contribution to that conference at its fifth session. At its fifth session, in December 1992, the Working Group invited

the Secretary of the World Conference to brief it about the agenda of the Conference, and discussed the nature and contents of its contribution to the World Conference.

B. Cooperation with government representatives

10. At its third session, the Working Group received a Cuban delegation headed by the Permanent Representative of Cuba to the United Nations Office at Geneva, at the latter's initiative. At its fourth session, the Working Group invited the Permanent Representative of the Union of Myanmar to the United Nations Office at Geneva, Ambassador Tin Kyaw Hlaing, to provide it with clarifications regarding recent developments in his country, and in particular with regard to the situation of persons whose cases had been submitted by the Working Group to the Government. Ambassador Tin Kyaw Hlaing kindly accepted the invitation and provided the Working Group with information. The Working Group wishes to seize this opportunity to express its appreciation to the representative of the Union of Myanmar. It also wishes to express its appreciation and gratitude to the members of the Cuban delegation, and in particular to the Dean of the Law Faculty of Havana University, Dr. Julio Fernández Bultes, who travelled from his country in order to meet with the Working Group and who provided it with detailed information and clarifications regarding the legal system in his country. The Working Group would like to express the hope that other government representatives would also manifest a similar spirit of cooperation, either at their own initiative or when invited by the Working Group to clarify specific questions.

C. Cooperation with non-governmental organizations

11. From the very early stages of its existence the Working Group, basing itself on the provisions of Commission on Human Rights resolution 1991/42 which instituted its mandate, has also sought and received information, views and observations from non-governmental sources. The Working Group has endeavoured to develop the spirit of cooperation which was manifested by the non-governmental organizations by adopting the view that the task of investigating cases of detention, as entrusted to it by the Commission, should be conducted in an adversarial manner. This approach is reflected and elaborated in the Working Group's methods of work (see annex IV). It may also be recalled that when the Working Group adopted its methods of work it had consulted with a number of experts and representatives of international bodies, both within the United Nations system and outside it, and with representatives of several international non-governmental organizations. The Working Group also stated in its first report that it had decided to update its methods of work "if this is deemed necessary, in the light of experience acquired while discharging its mandate" (E/CN.4/1992/20, para. 12). During the period covered by the present report, non-governmental organizations continued their fruitful cooperation with the Working Group by making several useful suggestions, some of which were taken into account by the Group when it revised its methods of work (see annex IV).

D. Communications with Governments

12. During the period under consideration the Working Group transmitted 34 communications containing newly reported cases of alleged arbitrary detention to the following Governments (the number of individual cases transmitted is given in parentheses): Burundi (1); Cameroon (1); Costa Rica (2); Côte d'Ivoire (1); Cuba (2 communications totalling 3 cases); China (3 communications totalling 36 cases); Dominican Republic (1); Ethiopia (2 communications totalling 4 cases); Haiti (3); Indonesia (1); Israel (2 communications totalling 3 cases); Libyan Arab Jamahiriya (1); Malawi (3); Morocco (1); Myanmar (2 communications totalling 12 cases); Nigeria (1); Philippines (2 communications totalling 41 cases); Republic of Korea (3); Syrian Arab Republic (3 communications totalling 15 cases); Tunisia (2); Turkey (1); United States of America (1); Viet Nam (2 communications totalling 6 cases); and Yugoslavia (1).

13. Replies to the above-mentioned cases were received from the following Governments: China, Cuba, Indonesia, Myanmar, Tunisia, Viet Nam and Yugoslavia.

14. In addition to the aforementioned replies, the Working Group also received replies to cases which were transmitted to Governments during the period covered by the Working Group's first report to the Commission (September 1991 to February 1992). Such replies, which were not mentioned in the Working Group's first report, were provided by the following Governments: China, Egypt, Malawi (reply sent in reaction to the decision adopted by the Working Group. See annex I, Decision No. 4/1992 (Malawi)), Morocco, Myanmar, Peru, Republic of Korea, Sudan, Turkey and Uganda. The Governments of Bhutan, Chile and Peru provided the Working Group with additional, updated information regarding the cases transmitted to them during that period.

15. At the time of the preparation of the present report, the Working Group was still awaiting replies to letters transmitted to the following Governments (this list applies to the period from the beginning of the Working Group's activity until the time at which this report was being prepared): Burundi, Côte d'Ivoire, Ethiopia, Islamic Republic of Iran, Israel, Lao Peoples Democratic Republic, Libyan Arab Jamahiriya, Malaysia, Nigeria, Philippines, Saudi Arabia, Syrian Arab Republic and United Republic of Tanzania.

16. It should be noted that some of the communications mentioned in paragraph 12 above were sent by the Working Group in November and December 1992 and, at the time this report was being prepared the deadline of 90 days indicated by the Working Group had not yet expired. Governments to which communications were addressed in November and December 1992 have therefore not been included in the above list of Governments from which the Working Group was awaiting replies. This concerns the Governments of Costa Rica, Cameroon, Dominican Republic, Haiti, Israel, Malawi, Morocco, Myanmar, Republic of Korea, Syrian Arab Republic, Turkey and United States of America.

17. Details on the contents of the allegations transmitted to Governments and the Governments' replies thereto, as well as other information concerning these cases, are reflected in the final decisions adopted by the Working Group (see annex I).

18. During the period covered by the present report the Working Group also decided to address "urgent action" messages to the following Governments: Bangladesh, China, India, Israel (2 messages), Malaysia, Myanmar, Philippines, Saudi Arabia, Syrian Arab Republic and Viet Nam. Most of the cases transmitted concerned persons with regard to whom it was alleged that they were being detained arbitrarily and that, as a result of that detention, their health, or even their life, might be in danger. In such cases the Working Group appealed to the Government, on a purely humanitarian basis and without prejudging the decision eventually to be taken as regards the arbitrary or non-arbitrary character of the detention, to do its utmost to safeguard the concerned person's right to life and to physical integrity. In some cases the Working Group also appealed to the Government to consider releasing the person in question, or, when appropriate, to ensure that he or she benefited from adequate medical treatment. In one case, in the Philippines, the Working Group resorted to the second category of situations envisaged in its methods of work (point 11(b)), which provides that in cases where it is not alleged that the detention may constitute a danger to the person's health or life but where the particular circumstances of the situation warrant urgent action, the Chairman of the Group, in consultation with two other members, may take action. In that case, the Government was urged to release the person detained without delay. The Working Group was subsequently informed by the source that the person was indeed released. In another three of the cases transmitted to Governments through the "urgent action" procedure - concerning Bangladesh, India and one of the cases transmitted to Israel - the Working Group also subsequently learned that the persons concerned were released. In the case of Bangladesh, the Government itself informed the Working Group of the release. In the cases regarding India and Israel, the sources of the initial information did so. The only two Governments to have provided information to the Working Group regarding cases transmitted to them through the "urgent action" procedure were those of Bangladesh, China and Myanmar.

II. "DELIBERATIONS" OF THE WORKING GROUP

19. In its first report to the Commission on Human Rights (E/CN.4/1992/20, chapter IV) the Working Group identified a number of situations involving questions of principle which required the Working Group's special consideration (see also para. 4 above). At its third session, in March 1992, the Working Group decided that it would consider such questions and adopt decisions thereon (referred to as "deliberations"), not in the abstract, but in connection with the consideration of individual cases submitted to it. Thus, deliberation 01 was adopted in connection with the consideration of cases in Myanmar, and deliberations 02 and 03 were adopted in response to questions put forward by the Cuban Government. The first three deliberations were adopted by the Working Group at its fourth session; deliberation 04, which concerns the question of re-education through labour (mentioned in the Working Group's first report to the Commission (E/CN.4/1992/20, para. 23) as

one of the special situations receiving the consideration of the Working Group), was adopted at the fifth session, in connection with the consideration by the Group of numerous cases reported in several countries. By adopting those deliberations the Working Group takes a position on a number of pertinent questions which may arise in other countries, thus laying the ground for its own jurisprudence and facilitating the consideration of future cases.

20. The "deliberations" as adopted are the following:

DELIBERATION 01
(Adopted by the Working Group at its third session)

House arrest

Without prejudging the arbitrary character or otherwise of the measure, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.

In all other situations, it will devolve on the Working Group to decide, on a case-by-case basis, whether the case in question constitutes a form of detention, and if so, whether it has an arbitrary character.

DELIBERATION 02
(Adopted by the Working Group at its third session)

1. The Working Group on Arbitrary Detention adopted the following deliberation in response to the letter from the Cuban Government dated 24 December 1991 requesting it to "publicly communicate to Member States for their comments" its views on the following points concerning its methods of work:

2. (a) The juridical standards which the Working Group has formally established for the admissibility of the communications it receives; under the procedure laid down by Economic and Social Council resolution 1503 (XLVIII), the exhaustion of all available means at the national level should be a *sine qua non* for accepting and taking action on each communication.

(b) The Working Group's opinion of the value to be attached to the national legislation in force in the Member States; this is an essential element for determining whether detention, arrest, preventive imprisonment or jailing is or is not arbitrary (that is to say, contrary to the legal order existing in the country in question, including international obligations acquired under treaties freely entered into).

(c) The legal grounds upon which the Working Group bases its consideration of the provisions contained in documents of a merely declaratory nature (for example, the principles set out in General Assembly resolution 43/173), or in juridical instruments which cannot be applied to an "accused" State that is not party to them (as would be the case of Cuba with respect to the International Covenant on Civil and Political Rights), as appropriate criteria to be used for determining *prima facie* whether a case of detention or imprisonment is "arbitrary".

A. Admissibility of communications subject to exhaustion of local remedies

3. The Working Group notes that, contrary to what is stated in paragraph (a) of the letter from the Cuban Government, there is no requirement under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 that local remedies must be exhausted in order for a communication to be admissible under the confidential procedure.

4. Paragraph 6 (b) (i) of the said resolution imposes such a requirement only if the Commission decides, as it is entitled to, to appoint a committee to carry out an on-the-spot investigation.

5. It will be noted that, of the 67 countries cited thus far under the 1503 procedure, in only one case has the question of the exhaustion of local remedies been raised; but it was raised as an element in the assessment of the facts in the light of the circumstances of the case, not as a condition of admissibility.

6. Moreover, if an admissibility procedure requires the prior exhaustion of local remedies, that condition is expressly provided for in the instrument or rule concerned as borne out, for instance, by article 41 (1) (c) of the International Covenant on Civil and Political Rights.

7. However, there is no such provision in resolution 1991/42 which lays down the Working Group's mandate.

8. The Working Group therefore considers that it is not within its mandate to require local remedies to be exhausted in order for a communication to be declared admissible.

B. Importance accorded to the national as compared to the international standard

9. The Working Group notes that, while resolution 1991/42, which lays down its mandate, refers expressly to the international standard, it has not provided for national law to be taken into consideration in determining whether a measure involving deprivation of freedom is arbitrary.

10. It nonetheless considers that national standards can be an important factor in determining whether a case of deprivation of freedom is arbitrary.

11. For this reason the Working Group took the view that, although national standards are not referred to in so many words in its mandate, it should also take them into account as a criterion in the assessment of cases submitted to it.

12. It would, however, point out that international law prevails over national law.

13. In the light of these considerations, it therefore decided to draft chapter I, paragraph 10, entitled "The Mandate and Legal Framework of the Working Group", to read:

"10. The legal framework within which the Working Group will have to carry out its mandate is made up primarily of international standards and legal instruments, but in certain instances of domestic legislation as well. The Working Group will thus have to look into domestic legislation in investigating individual cases, where it will have to determine whether internal law has been respected and, in the affirmative, whether this internal law conforms to international standards. It may thus have to consider, in certain cases where there are alleged practices of arbitrary detention, whether they have not been made possible as a result of laws which may be in contradiction with international standards."

14. It follows from the foregoing that, in the performance of its task, the Working Group takes into consideration not only the national standard but also the international standard, ensuring, where necessary, that the national standard conforms to the relevant international standard.

C. Possibility of the Group's referring to instruments of a purely declaratory nature

15. The Working Group would point out that resolution 1991/42, which lays down its mandate, refers expressly to "the ... international legal instruments accepted by the States concerned" as an international reference standard for the Working Group, in addition to the Universal Declaration of Human Rights. Consequently, the specific question raised by the Cuban Government's letter, as applied to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter referred to as the "Body of Principles"), is to establish (a) whether the Body of Principles is actually an "instrument", (b) whether it is of a "declaratory" nature and, if so, (c) whether it can be regarded as having been "accepted" by Member States.

(a) Legal definition of "instrument"

16. As interpreted in legal writings generally, the term "legal instruments" covers all legal texts, whether they are conventional, that is to say binding, instruments, such as conventions, covenants, protocols and other treaties or such forms of agreement as resolutions or gentlemen's agreements (for instance, the Final Act of the Conference on the Security and Co-operation in Europe, the Paris Charter).

17. The Cuban Government's letter of 24 December 1991 in fact supports this proposition since it refers to the Body of Principles as an "instrument".

18. The use of the word "instruments" without further qualification in paragraph 2 of resolution 1991/42 therefore shows that it was not the intention of the Commission on Human Rights to confine the reference standards of the Working Group to treaties and other similar instruments but that it also wished to include in it acts of agreement, such as resolutions.

(b) "Declaratory" nature

19. The question put to the Working Group is whether the Body of Principles should be regarded as an "instrument of a purely declaratory nature", according to the characterization given by the Cuban Government, and, if so, whether the Working Group can still invoke it.

20. The Body of Principles is an instrument declaratory of pre-existing rights, inasmuch as the main purpose of many of its provisions is to set forth, and sometimes develop, principles already recognized under customary law.

21. It should be noted that, in the case of mere acts of agreement (and this applies to General Assembly resolutions), legal writers draw a distinction between those which are declaratory of pre-existing rights (as in the above-mentioned example of most of the provisions of the Body of Principles or the Declaration on Territorial Asylum or the Declaration on Torture, etc.) and those - purely declaratory - instruments whose purpose is not to produce such an effect (for example, resolutions which take note of a report of a working group, or which institute a decade on a given theme).

22. The Working Group also wishes to point out in this connection that, according to legal writers, in the case of a non-party State, the same applies to any convention since it is not an instrument which lays down procedural rules, for instance, and therefore has no declaratory effect (as, for example, the Optional Protocol to the International Covenant on Civil and Political Rights) but is an instrument which lays down principles (such as the Covenant). In other words, and to take the case of the Covenant again, it has a binding effect with respect to States parties and a declaratory effect with respect to non-party States.

23. In the light of the foregoing, the Working Group considers that, when it takes a decision on whether a case of detention is arbitrary, it is justified in referring, in categories I, II and III which it established in connection with its methods of work both to:

> the International Covenant on Civil and Political Rights, even if the Working Group has before it a case concerning a non-party State, in view of the tenacity of the declaratory effect of the quasi-totality of its provisions;
>
> and the Body of Principles, again on account of the declaratory effect of its substantive provisions.

(c) The concept of "accepted" instrument

24. When it comes not to treaty instruments having binding force but to acts of agreement, the question is whether they can still be regarded as having been "accepted", inasmuch as resolution 1991/42 setting up the Working Group refers, inter alia, to "the relevant international legal instruments accepted by the States concerned" as reference standards for the Working Group.

25. In adopting a position on this point, the Working Group relied on a decision of the International Court of Justice (Judgment of 27 June 1986: Case concerning Military and Paramilitary Activities in and against Nicaragua - Nicaragua v. United States of America - Reports 1986, pp. 100 et seq.), which held that the "consent" of the States Members of the United Nations to the text of declaratory resolutions setting forth customary law (particularly where they are adopted by consensus) may "be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves" and, in so far as the United States had supported those resolutions, the Court considered that it had "accepted" them.

26. In paragraph 1 of the above-mentioned resolution 43/173, however, the General Assembly "approves" the Body of Principles. International legal terminology makes no distinction between "acceptance" and "approval". Approval was given by all States since the resolution was adopted by consensus. By participating in that consensus, the States therefore "accepted" the Body of Principles.

27. This is particularly so since:

paragraph 4 of General Assembly resolution 43/173 "urges that every effort be made so that the Body of Principles becomes generally known and respected";

the first paragraph of the Body of Principles stipulates: "These principles apply for the protection of all persons ...".

28. The Working Group therefore considers that the Body of Principles, as an act of agreement, should be regarded as having been "accepted" within the meaning of the paragraph in resolution 1991/42 which lays down its mandate.

Conclusion

29. These are the legal grounds - this being the question posed - which led the Working Group to adopt the term "accepted declaratory instrument":

for the Body of Principles, on the one hand, in so far as Member States are concerned;

for the International Covenant on Civil and Political Rights, on the other, in so far as States which have yet to ratify it are concerned;

and hence to take it into consideration when determining whether a deprivation of freedom is arbitrary.

DELIBERATION 03
(Adopted by the Working Group at its fourth session and amended at its fifth session)

This deliberation was adopted as a result of a letter sent by the Cuban Government to the Working Group, dealing with the following questions:

A. The competence of the Working Group to consider communications relating to the arbitrariness or otherwise of deprivation of freedom when it is subsequent to a conviction

The Working Group notes that neither the provisions of resolution 1991/42, which established its terms of reference, nor the discussion which led up to its adoption, as reflected in the summary records (E/CN.4/1991/SR.25-SR.33), justify the view that such communications should be declared inadmissible on the ground that there has been a conviction.

It notes, however, that the resolution, in its paragraph 2, gives the Working Group the task of investigating cases of detention, not stricto sensu, in other words as opposed to cases of imprisonment, but where the detention is "imposed arbitrarily or otherwise inconsistently with the relevant international standards", as referred to in the resolution. It also notes that the International Covenant on Civil and Political Rights uses the expressions "arrest" and "detention" indiscriminately in referring to persons standing trial and to persons who have already been tried. Article 9, paragraph 3, states that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge ... and shall be entitled to trial within a reasonable time ...", from which it be must be inferred that a person "detained" has not been tried. It states further that "It shall not be the general rule that persons awaiting trial shall be detained in custody". Finally (paragraph 4), anyone who is deprived of his liberty by "arrest or detention" shall be entitled to take proceedings before a court in order that a decision may be taken on the lawfulness of his detention, which is incompatible with the status of a convicted person. This interpretation is the same as that arrived at by the Human Rights Committee in its General Comment 8 adopted at its sixteenth session (1982) (see HRI/GEN/1), when it states that "paragraph [1 of article 9] is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.". The Committee adds that "the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention". The Committee then goes on to discuss the question of "preventive detention", which in its view should more logically be called "preventive arrest".

Any other interpretation would have led the Working Group to declare itself incompetent to consider, for example:

- Continuation of deprivation of freedom notwithstanding an amnesty or after expiry of the sentence handed down (cf. category I of the principles applicable in the consideration of cases submitted to the Working Group);

- Cases where the deprivation of freedom is the result of clear violations of the right to a fair trial of a gravity such that they confer on it an arbitrary character (cf. category III of the principles applicable in the consideration of cases submitted to the Working Group) as asserted in the reports submitted to the Commission on Human Rights and the General Assembly by the Ad Hoc Working Group of Experts on Southern Africa, by the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories and by the Special Rapporteur on the question of human rights in Chile (prior to 1988).

Such an interpretation would respect neither the letter nor the spirit of the above-mentioned resolution 1991/42.

Recalling that the Commission on Human Rights, in its resolution 1992/28, after expressing its satisfaction to the Working Group at the diligence with which the letter had devised its methods of work (para. 1), had thanked the experts for the rigour with which they had discharged their task (para. 2), the Working Group decided that there was no necessity to review the provisions it had adopted relating to its methods of work.

B. Improvement in the quality of the information on the basis of which the Working Group has to take decisions

The Working Group noted a marked improvement in the information submitted to it - as regards both accuracy and veracity - after it had taken the following two measures:

1. As regards the accuracy of the information: the Group improved its methods by adopting a questionnaire (E/CN.4/1992/20, annex II) which enables the secretariat where necessary, in liaison with the Chairman, to seek from the source additional information to be placed before the Working Group.

2. As regards the veracity or otherwise of what is alleged, the Working Group considered that only the establishment of an adversarial procedure would be sufficiently effective. It was, moreover, thanks to such a procedure that, in the case of the communications concerning Cuba, for example, certain inaccuracies or errors (non-existent person, confusion of name, non-existent place of detention, person not in detention, etc.) came to the attention of the Working Group.

3. Furthermore, the Working Group considers that the adoption of an adversarial - and not accusatory - procedure is the only option that will enable it to satisfy the requirement of objectivity imposed on it by the Commission on Human Rights in paragraph 4 of its resolution 1991/42.

C. The 90-day deadline for replies

In adopting this deadline, the Working Group based itself on the experience of other thematic rapporteurs of the Commission on Human Rights.

It will be noted that, under paragraph 10 of the Working Group's methods of work (E/CN.4/1992/20, para. 13), if the Government's reply has not been received by the deadline, the Working Group "may" (and not "must"), on the basis of all data compiled, take a decision. This does not therefore imply a priori any "presumption as to the veracity of the allegation made".

D. Criteria for resort to the "urgent action" procedure

Considering this procedure to be necessarily exceptional in its principle and summary in its methods, the Working Group sought to make it restrictive by limiting resort to it to the following two cases and by attaching specific safeguards to its use (cf. E/CN.4/1992/20, para. 13, subpara. 11):

- first case: "where there are sufficiently reliable allegations that a person is being detained arbitrarily and that the continuation of the detention constitutes a serious danger to that person's health or even life". Whenever, prima facia, these two conditions are fulfilled, the Chairman himself, or, in his absence, the Vice-Chairman, may take the decision.

- second case: "where the detention may not constitute a danger to a person's health or life, but where the particular circumstances of the situation warrant urgent action". In this case there is a further safeguard: the Chairman must secure the agreement of two other members of the Working Group.

This second, and more strict, procedure has been applied only once.

DELIBERATION 04
(Adopted by the Working Group at its fifth session)

At its fifth session, in connection with the consideration of a number of cases, the Working Group adopted the present deliberation pursuant to paragraph 23 (d) of its report to the Commission on Human Rights (E/CN.4/1992/20), which read as follows:

> "23. ... (d) Rehabilitation through labour: the Working Group will have to determine whether measures taken most often in the form of administrative detention and generally designed to encourage an individual to change or even renounce his opinions, using methods resembling coercion, constitute, by definition, arbitrary detention under category II ...".

Responding to this question and taking account of the diversity - and sometimes the absence - of legislation on the matter and of the modalities of its implementation, the Working Group decided to deal with these cases in the following manner.

In deciding whether deprivation of freedom accompanied by compulsory labour is arbitrary or not, the Working Group, after having ascertained whether the decision involved was judicial or administrative, will consider the role played by:

I. The economic and juridical status of the person deprived of freedom depending on whether or not he or she is required to perform compulsory labour;

II. The existence, accompanying the decision, of adequate safeguards to ensure that there are no violations of the right to a fair trial of a gravity such that they confer on the deprivation of freedom an arbitrary character, within the meaning of category III of the principles applicable in the consideration of cases submitted to the Working Group;

III. The purpose of the measure, whatever it may be called (reform, rehabilitation, readjustment, reintegration, reintegration into society, etc.). In order to determine whether it is in conformity with the international norms relating to freedom of opinion and of expression, consideration will be given to those referred to in category II of the applicable principles referred to above and especially article 18, paragraph 2, of the International Covenant on Civil and Political Rights, which provides that "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".

I. Compulsory labour

Compulsory labour may be the result of either a criminal penalty or an administrative measure.

A. Criminal penalties

It should be noted first of all that, as far as criminal penalties imposed by courts are concerned, almost all penitentiary systems include a period of work in the daily schedule of detainees. This work, which is in principle optional during pre-trial detention, is almost always compulsory following conviction. This form of compulsory labour is consistent with the international norms. Convicted persons usually wish to perform such work, and one of the difficulties encountered by the authorities, particularly during a recession, is to find work for them to do.

B. Administrative measures

The situation is not the same, however, when the deprivation of freedom is administrative in character. There probably are bodies legislation under which administrative measures of rehabilitation do not include compulsory labour or are executed in a manner similar to those mentioned above in connection with the execution of criminal penalties. Usually, however, compulsory labour is of a coercive nature which makes it possible to exploit the detainee's working capacity: central organization of camps into planned production units with high production norms implying long hours, rapid working tempos and derisory remuneration - if any payment is made at all - all of which are characteristic features of forced labour.

II. The right to a fair trial

It is mainly in assessing the juridical character of administrative measures that this subject will assume particular importance.

A. Judicial measures

In the case of a criminal penalty that includes a requirement to perform compulsory labour imposed by the court as punishment for an offence, the arbitrary character or otherwise of the deprivation of freedom may be assessed simply by referring to category III of the principles applicable in the consideration of cases submitted to the Working Group.

B. Administrative measures

Where administrative measures are concerned, however, the following cases may call for different solutions:

1. The case where there exists a judicial remedy. As this case is similar to the preceding one (criminal penalty), it must be assessed directly by reference to category III. The conclusion will be based mainly on the safeguards provided by the remedy and the effectiveness thereof.

2. The case where there are substitute safeguards such as a specific administrative instance. In this case it will be necessary to consider the extent to which the safeguards are equivalent by examining the following points: the juridical basis (laws and regulations or the absence thereof, the consultative or decision making character of the instance, whether it is collegial or not, its composition, whether there is provision for cross-examination, whether there is assistance by counsel, the time elapsed between the person's arrest and his appearance before the administrative instance, etc.).

3. Cases of measures that are of either limited or unlimited duration:

(a) The case where the measure is of limited duration.

Notwithstanding the fact that it is of limited duration, the deprivation of freedom may be arbitrary in character as regards any period which may precede it, where such preliminary period is not deducted from the term of deprivation of freedom finally served.

(b) The case where the measure is of unlimited duration.

Whether as a result of the law, of jurisprudence or of practice, there are four situations that are assimilable to detentions of unspecified duration which, as such, necessarily have a totally or partly arbitrary character:

- Where the unspecified duration of the measure is directly provided for by law;

- Where the lifting of the measure depends on the progress made, in the view of the authorities, in the detainee's rehabilitation;

- Where the measure, although initially limited in duration, may be continually reimposed (depending on the circumstances, only the initial period may not be arbitrary in character);

- Where the person may continue to be held in detention upon expiry of the measure, no longer as a penalty, but in order to use his working capacity for production purposes. (Here again, only the initial period may, depending on the circumstances of the case, be arbitrary in character).

III. The purpose of the deprivation of freedom, from the standpoint of freedom of thought

Where the main purpose of the measure is political and/or cultural rehabilitation through self-criticism, the deprivation of freedom is, by reason of its very purpose, inherently arbitrary. This is because it violates in flagrant fashion two fundamental international norms, namely two rules laid down in the International Covenant on Civil and Political Rights:

(a) The Covenant's article 14, paragraph 3, subparagraph (g), which provides that no one may be compelled to testify against himself or to confess guilt;

(b) And especially its article 18, which provides that:

- Everyone shall have the right to freedom of thought, in other words to have a belief of his choice, and, as a corollary,

- No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Conclusions

I. Cases where the deprivation of freedom is not considered to be arbitrary

A. Cases of criminal penalties imposed by a court without any serious violations of the right to a fair trial (cf. category III of the principles applicable in the consideration of cases submitted to the Working Group), where compulsory labour is merely one aspect of execution of the penalty of deprivation of freedom.

B. Cases of administrative measures where one or more effective judicial (and not merely hierarchic) remedies are available, that are exercised according to a procedure that does not involve any particularly serious violations of the right to a fair trial.

C. Cases in which, although the administrative measure is not accompanied by any judicial safeguards stricto sensu, alternative safeguards are available, provided that the latter are sufficient to ensure a level of protection comparable to that provided by the principles of the right to a fair trial.

II. Cases where the deprivation of freedom may be considered arbitrary

A. The case of a criminal penalty imposed in a manner that involves particularly serious violations of the right to a fair trial (category III).

B. The case of an administrative measure where a judicial remedy is available resort to which also involves such violations (category III).

C. The case of an administrative measure where there are alternative safeguards that are clearly of less value than those which guarantee the right to a fair trial (category III).

D. The case of an administrative measure whose duration is specified, but not at the time of the decision, the latter offering adequate safeguards. The initial deprivation of freedom may be arbitrary in character provided that its duration can be determined and is not deducted from the term of deprivation of freedom finally served.

III. Cases where the measure of deprivation of freedom is inherently arbitrary in character

A. Case of an administrative measure of indefinite duration.

1. Where the duration is linked to the progress which, in the view of the authorities, has been made in rehabilitation.

2. Where, although the measure has been made of specific duration, it is continuously renewable and, a fortiori, renewed.

3. Where, upon expiry of the measure, the person is kept in detention, whether for a fixed or for an indefinite period, in order to use his working capacity for productive ends.

B. The case of a coercive administrative measure whose purpose is not only occupational rehabilitation, but mainly political and cultural rehabilitation through self-criticism.

III. DECISIONS ADOPTED BY THE WORKING GROUP

21. In order to ensure more harmonized drafting of decisions by the various members and to facilitate final editing of the decisions by the secretariat, the Working Group adopted at its third session (March 1992) a drafting plan covering the following:

(a) Identification of the person(s) and the Government concerned;

(b) Date of sending of the communication to the Government;

(c) Mention of the Government's compliance, or failure to comply, with the Working Group's request for a reply to the communication within a 90-day deadline;

(d) Mention of the fact that the Government's reply was transmitted to the source and that the latter provided (or did not provide) the Group with its observation;

(e) Description of the three categories used by the Working Group when it takes a decision on the cases in question;

(f) A statement by the Working Group that it believes itself to be in a position to take a decision on the case in question;

(g) Mention, when appropriate, of action taken on the same case by another special rapporteur of the Commission on Human Rights;

(h) Detailed consideration of the facts and circumstances of the case;

(i) The Working Group's decision mentioning, when pertinent, the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which are deemed by the Working Group not to be respected in the case in question, and the category or categories in which the case in question falls;

(j) The Working Group's recommendation to the Government concerned (when relevant).

22. At its fourth session, from 28 September to 2 October 1992, the Working Group considered and adopted 40 decisions (Decisions Nos. 1-40), concerning 200 persons in 15 countries. At its fifth session, from 2 to 11 December 1992, it considered and adopted 14 decisions (Decisions Nos. 41-54), concerning 20 persons in 13 countries. Most of the decisions are reproduced in annex I, in their order of adoption by the Working Group, and in the form sent to the Governments concerned. (Due to technical reasons, some of the decisions adopted during the Working Group's fifth session are not reproduced in the present report, and will be reproduced in its next report to the Commission at its fiftieth session. None the less, the cases concerned are taken into account in the statistics contained in annex III). Paragraph 3, which is common to all the decisions, is given only in the first decision. With regard to 107 of the cases considered, the Working Group decided that they should be filed since the persons concerned were no longer in detention and there were no special circumstances, in the Working Group's view, warranting the Group to consider and pronounce on the nature of their detention. Such cases are listed in annex II to this report, entitled "Decision on cases of reportedly released detainees and list of such persons". Nevertheless, decisions involving several persons, including both persons belonging to the group of released persons mentioned in annex II and other persons, are also fully reproduced in annex I.

IV. GENERAL CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

23. The examination of the cases submitted to the Working Group shows that the concern of the Commission on Human Rights about cases of arbitrary detention is justified.

24. It will be remembered that the Working Group was established after a lengthy debate in the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities dating back to 1985, when the Commission assigned the Sub-Commission the task of looking into the practice of administrative detention. The expert, Mr. Louis Joinet, was asked to prepare a "working paper". This was done in 1987 (E/CN.4/Sub.2/1987/16) and the document was then expanded in 1990 with government replies to a questionnaire (E/CN.4/Sub.2/1990/29 and Add.1).

25. In his report, the Sub-Commission's Rapporteur maintained that the problem of administrative detention overlaps with the mandates of other experts and the working groups such as those on extrajudicial, summary or arbitrary executions, torture, states of emergency, enforced disappearances or detention on grounds of mental illness or mental problems. He proposed the appointment of a special rapporteur or the establishment of a working group to study arbitrary or wrongful detention. The Sub-Commission agreed and transmitted the proposal to the Commission on Human Rights, which opted in resolution 1991/42 for the Working Group and established its mandate, after long negotiations.

26. The Working Group has viewed its task as a contribution to the purpose of the United Nations - within the purview of its mandate - to promote and encourage respect for all human rights and fundamental freedoms, so as to ensure that they are fully realized, and to remain alert to any violation of the freedom of the individual, wherever it occurs.

27. Accordingly, guided by the principles of non-selectivity, impartiality, and objectivity and by a refusal to use its mandate for political ends, as requested by the Commission on Human Rights in resolution 1992/39, it has received and examined in that spirit all cases submitted by Governments, intergovernmental organizations, non-governmental organizations and individuals concerned, their families or their representatives, without drawing a distinction as to source.

28. The list of countries concerned by the Working Group's decisions might none the less convey the impression of a selective approach. This - and the Working Group regrets the fact - is because the Group can pronounce only on cases about which it has received information. It is, therefore, dependent entirely on its sources.

29. Yet situations of arbitrary deprivation of freedom do exist in other countries. Nevertheless, the Group considers that its mandate does not in the circumstances allow it to consider situations on its own initiative. It will be seen from the summary record that, in the discussion leading up to the adoption of resolution 1991/42, the possibility of the Working Group's

examining situations on its own initiative was expressly ruled out. For this reason, the Group's sources are exhaustively enumerated in resolution 1991/42, namely Governments, intergovernmental and non-governmental organizations and individuals concerned, their families or their representatives.

30. In its concern to improve this situation, the Group hopes that the sources, more particularly non-governmental organizations which extend special cooperation to the Group (cf. para. 11 above), will provide information on a larger number of countries.

31. An examination of the Group's decisions, points to certain conclusions. One is the continual abuse of states of emergency, which are a fruitful source of arbitrary arrests. While the number of countries to have declared a state of emergency has fallen (27 were still under a state of emergency in November 1992, according to the report by Mr. Leandro Despouy, the Special Rapporteur on states of emergency (E/CN.4/Sub.2/1992/23/Rev.1)), it is nevertheless alarming to see the use made of this instrument, which is intended only for genuine emergency situations entailing a risk to the life of the nation, and not for overcoming mere political situations, even if they do involve an element of violence. In this regard, the Group finds it regrettable that Mrs. Aung San Suu Kyi, the Nobel Peace Prize winner, is still being held in the Union of Myanmar.

32. Another matter of concern is the misuse of criminal charges for acts or omissions that are described inadequately, if at all, as offences. When article 10 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Civil and Political Rights prohibit a sentence for "any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed", national or international law are also required to define the act or omission, and this can only be done with a proper description of the particular kind of conduct. Mere references to "treason" (mentioned by one country); "enemy propaganda", "propaganda against the Republic" or "subversive propaganda" (three countries); "offences against public order", "State security offences" (two countries); "organizing of activities against the State" (one country); "terrorism" and others do not meet the requirements of proper characterization of offences, which is the key to any modern penal system. The Working Group learned of accusations of "terrorism" in two countries, affecting approximately 20 people, yet the detainees were not accused of any act of violence.

33. Something else that has struck the Working Group is the excessive renewal of detention, without the accused person being convicted. All the cases in "categories I and III" of its principles for the consideration of cases reveal this failure, as do many of the cases in category II.

34. Another concern is the abuse in establishing special courts, but above all emergency courts, under various names, such as the "Revolutionary Court" (one country), "Military Court" (three countries), "People's Court" (two countries) or Supreme Court of State Security (one country). Admittedly, courts of this kind do not seem to be strictly inconsistent with international rules. However, experience unfortunately proves (and the example of many cases submitted to the Group shows) that in many States they are being used

more and more, or even being established for the purpose, to try dissidents and opponents who are then denied any guarantee to the right to be heard by an independent and impartial tribunal. The Working Group therefore shares the Commission's concern, reflected in resolution 1992/31, about respect for the protection of all persons in the administration of justice, and it considers that the human right to be heard by an independent and impartial tribunal is the very essence of the human right to justice.

35. The Working Group notes that about 90 per cent of the cases received (including cases filed because the persons had been released) relate to allegations that the cause of detention was exercise of the rights of freedom of opinion and expression; normally, in 20 per cent of the cases the reasons for deprivation of freedom also included exercise of the right of assembly, and, in 15 per cent, exercise of the right to freedom of political association. All this shows that the freedom of the individual is respected in many countries only if the individual does not make use of his freedom of conscience.

36. Accordingly, the Commission on Human Rights was justified in expressing its concern in resolution 1992/22 about "the extensive occurrence in many parts of the world of detention of ... persons who exercise the right to freedom of opinion and expression" and their "intrinsically linked" rights, such as "freedom of thought, conscience and religion, of peaceful assembly and freedom of association".

37. Furthermore, the Working Group regrets that no more than (approximately) 50 per cent of Governments responded to the Group's requests. This attitude fails to bear in mind the statement by the Commission on Human Rights in resolution 1992/41 that it encourages "Governments to respond expeditiously to requests for information made to them through the procedures, so that the thematic special rapporteurs", and the Working Group on Arbitrary Detention, "may carry out their mandates effectively".

38. The Working Group notes that the lack of sufficient information could also be attributed initially to non-governmental organizations; in recent cases, more comprehensive information has been supplied.

39. As to its future work, the Working Group laid down the following guidelines, in the light of the results of its first two years of work.

40. The first year, with a view to devising its methods of work on the basis of concrete situations, rather than with the aim of taking decisions, the Group engaged largely in an analysis of cases and in testing the introduction of an adversarial procedure. At its forty-eighth session, the Commission on Human Rights expressed its satisfaction to the Working Group at the diligence with which the Group had devised its methods of work, took note of the Group's report and thanked the experts for the rigour with which they had discharged their task.

41. The second year, reported on in this document, has been taken up with the first decisions (see annex III). A draft for finalization has been worked

out. At the same time, the Group has taken a position, in the form of deliberations, on a number of questions of general principle, so as to avoid any differences of legal interpretation within the Group.

42. In the third year, consideration should be given to the following:

(a) Better control over the flow and range of cases submitted for a decision, as well as an examination of the general trend in the use of arbitrary detention;

(b) Improved methods of work by means of continued cooperation with Governments, so as to ensure follow-up to the recommendations made in the Group's decisions;

(c) The possibility of carrying out the first mission in situ, adopting criteria whereby human rights promotion (taking stock of current progress, encouraging improvements, bringing practice more into line with the rules, training needs, and so on) is given at least as much prominence as protection of human rights, so as to foster an effective spirit of cooperation between the country concerned and the Working Group.

B. Recommendations

43. From a scrutiny of its mandate, the debate at the forty-eighth session of the Commission on Human Rights, the cases submitted for its consideration and the general and particular observations of Governments, as well as the foregoing conclusions, the Working Group can suggest that the Commission should propose the following to Governments and to sources:

(a) If the Working Group is to carry out its task efficiently, it is important for the information with which it is supplied to be timely and comprehensive, setting out all the factors that are important for a proper decision. The information should cover both legislative aspects (constitutional and legal provisions, regulations and jurisprudence) and the acts which are alleged to warrant the detention of the person concerned. It is vital to say precisely which authority ordered the detention, along with the court - if any - that is trying the case;

(b) Governments should make serious efforts to bring their laws into line with the principles of international human rights instruments, more particularly in the following respects:

(i) A constitutional declaration of a state of emergency, so that the latter is not used continuously but in a genuine emergency, involves measures that are commensurate with the circumstances and actually does jeopardize the "life of the nation";

(ii) The elimination of offences described vaguely or encompassing indeterminate situations. Abuse of charges for such offences leaves an uncertain borderline between what is lawful and what is unlawful, and is a constant source of violations;

(iii) The existence of special or emergency courts to try dissidents and opponents. The very existence of such courts points to distrust of the regular judges, who afford the best guarantee - albeit not always adequate - of impartiality and independence;

(c) The Group also specially recommends strengthening the institution of habeas corpus. A scrutiny of all the cases filed because the person was released before a decision was taken shows that in only one instance (Mexico) was a person released as a result of a court decision responding to a writ of habeas corpus. This has been a matter of serious concern to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, and the Working Group specifically examining the question of arbitrary detention can do no less than endorse their proposals;

(d) The Working Group, wishing to follow up cases in which it has requested a Government to take the necessary measures to rectify a case of arbitrary detention, proposes that the Commission on Human Rights should recommend to the Government that it report those measures to the Working Group within a period of four months following notification of the decision;

(e) At the close of the second year of its mandate, the Working Group notes that, while the secretariat has - with some difficulty - been able to cope with the tasks assigned to it, the reason lies in the secretariat's competence and efficiency, and also the fact that the Group had not got fully into its stride. At its fifth session, the Group gained the clear impression that, in view of the increasing number of individual cases submitted to it and the adversarial nature of the procedure it has adopted to investigate those cases, a procedure which among other things leads to voluminous correspondence, both with Governments and with sources, the Group might no longer be in a position to fulfil its task. It would then be faced with the following choice: file cases which deserve consideration, simply because it is unable to examine them, and this would be detrimental to the victims; or obtain the allocation of appropriate human and material resources as soon as possible.

Annex I

DECISIONS ADOPTED BY THE WORKING GROUP

DECISION No. 1/1992 (ISLAMIC REPUBLIC OF IRAN)

Communication addressed to the Government of the Islamic Republic of Iran on 14 October 1991.

Concerning: Ali Ardalan, Mohammed Tavassoli Hojati, Hashem Sabbaghian, Mezameddin Mohaved, Abdol Fazl Mir Shams Shahshahani, Dr. Habidollah Davaran, Abdoladi Bazargan, Khosrow Mansourian, Akbar Zaninehbaf on the one hand and the Islamic Republic of Iran on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (see report of the Working Group E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Islamic Republic of Iran. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and

circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl, pursuant to Commission resolution 1991/82 (E/CN.4/1992/34).

6. It is clear from the facts as reported that Ali Ardalan, Mohammed Tavassoli Hojati, Hashem Sabbaghian, Mezameddin Mohaved, Abdol Fazl Mir Shams Shahshahani, Dr. Habidollah Davaran, Abdoladi Bazargan, Khosrow Mansourian and Akbar Zaninehbaf were subjected to arrest for approximately one year without charge or trial in connection with an open letter addressed to President Rafsanjani criticizing the Government of Iran as alleged. It is further clear that the subsequent trial and the sentences pronounced were the result of opinions expressed by them and for having criticized the Government. There is no material on record to lead the Working Group to draw an inference that the expression of their opinions endangered in any way national security or public order. Their arrest and continued detention is in clear violation of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. The Working Group notes that the Islamic Republic of Iran is a party to the International Covenant on Civil and Political Rights.

7. Ali Ardalan, Mohammed Tavassoli Hojati, Hashem Sabbaghian, Mezameddin Mohaved, Abdol Fazl Mir Shams Shahshahani, Dr. Habidollah Davaran, Abdoladi Bazargan, Khosrow Mansourian and Akbar Zaninehbaf, to the extent that they were held for approximately one year without charge or trial and were denied access to defence counsel, were deprived of the basic guarantees to which they were entitled under articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

8. The facts as alleged also indicate that the proceedings before a Revolutionary Court were not in the nature of public hearings and as such were in violation of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

9. The facts as alleged further lead to the conclusion that the prison sentences received by Ali Ardalan, Mohammed Tavassoli Hojati, Hashem Sabbaghian, Mezameddin Mohaved, Abdol Fazl Mir Shams Shahshahani, Dr. Habidollah Davaran, Abdoladi Bazargan, Khosrow Mansourian and Akbar Zaninehbaf did not take into account the period of approximately one year during which they were detained without charge or trial. The Working Group finds this to be arbitrary in accordance with category III of the principles applicable in the consideration of cases submitted to the Working Group.

10. The Working Group also takes note of paragraphs 262 and 438 and page 104 (in annex V, entitled "Government information relating to the list of prisoners handed to the Iranian authorities on 8 December 1991 in Tehran) of the report by the Special Representative of the Commission on Human Rights.

11. In the light of the above the Working Group decides:

The detention of Ali Ardalan, Mohammed Tavassoli Hojati, Hashem Sabbaghian, Mezameddin Mohaved, Abdol Fazl Mir Shams Shahshahani, Dr. Habidollah Davaran, Abdoladi Bazargan, Khosrow Mansourian and Akbar Zaninehbaf is declared to be arbitrary, being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of Ali Ardalan, Mohammed Tavassoli Hojati, Hashem Sabbaghian, Mezameddin Mohaved, Abdol Fazl Mir Shams Shahshahani, Dr. Habidollah Davaran, Abdoladi Bazargan, Khosrow Mansourian and Akbar Zaninehbaf to be arbitrary, the Working Group requests the Government of the Islamic Republic of Iran to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 2/1992 (LAO PEOPLE'S DEMOCRATIC REPUBLIC)

Communication addressed to the Government of the Lao People's Democratic Republic on 14 October 1991.

Concerning: Latsami Khamphoui and Thongsouk Saysangkhi on the one hand and the Lao People's Democratic Republic on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (see E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Lao Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It is alleged in the communication from the source that Latsami Khamphoui, former Deputy Minister of Agriculture and Forestry, and Thongsouk Saysangkhi were arrested on 8 October 1990 after having written and circulated in Vientiane and elsewhere letters addressed to the leaders of the Lao People's Democratic Republic, in which they criticized the country's economic and social system.

6. In his letters dated 9 and 12 January 1990 (circulated in June 1990), addressed to Kaysone Phomvihan, President of the Lao People's Democratic Republic and head of the ruling party, the Lao People's Revolutionary Party, Latsami Khamphoui denounced the anarchy, corruption and laxity prevailing in the country and the fact that many people were in prison or had been compelled to flee the country for having challenged the President's erroneous assessment of the situation. He also criticized the President for having distorted the ideals of Marxism-Leninism and for having introduced a system of economic exploitation in conjunction with political authoritarianism.

7. In his letter dated 26 August 1990, Thongsouk Saysangkhi for his part submitted his resignation from the post of Deputy Minister of Science and Technology and from his membership of the Lao People's Revolutionary Party to President Kaysone Phomvihan. He explained his resignation by his opposition to an "antiquated regime that restricts the people's freedoms and democracy" and to the "dictatorial power of cliques revolving around personalities". In addition, he demanded the holding of free elections, the practical enjoyment of the people's freedoms and of democracy and the establishment of democratic institutions, opposed to the preservation of a feudal communist system. In addition, he expressed his conviction that the history of mankind had demonstrated the incapacity of the single-party system, based solely on coercion, to provide people with prosperity and happiness.

8. According to the source, Latsami Khamphoui and Thongsouk Saysangkhi have been detained without charge since their arrest and have not been brought before a court.

9. On 3 November 1990, the official media announced that Latsami Khamphoui and Thongsouk Saysangkhi were to be questioned and tried under article 51 of the Criminal Code, which prohibits treason. According to other sources, they were accused by the authorities of having violated articles 51 and 59 of the same Code, which prohibit "insurrection" and "propaganda against the Lao People's Democratic Republic". Moreover, the source reports that it has received information indicating that on several occasions the victims asked to be allowed to challenge the lawfulness of their detention before a court, but their request was always rejected, as was their right to a defence. Thus, they have been unable to obtain access to a lawyer, although they have been informed that three Lao and four foreign lawyers have been appointed on their behalf, although they have been unable to meet them, and the lawyers have not been given access to the case documents in order to prepare the defence. This was contrary to the provisions of the Lao Code of Criminal Procedure itself, article 18 of which stipulates that any suspect, whether or not charges have been brought against him, may choose a lawyer to defend his case and to examine the trial documents once the investigation and examination proceedings have been completed.

10. Latsami Khamphoui and Thongsouk Saysangkhi are reportedly in "temporary detention" under article 50 of the Code of Criminal Procedure in Xam Khe prison in Vientiane, the country's main prison, where they are being held in complete isolation and are being denied the medical care their state of health requires.

11. It is clear from the facts as reported that Latsami Khamphoui and Thongsouk Saysangkhi have now been held in detention for over 17 months, without being charged or brought to trial, for having sent letters to the authorities of the Lao People's Democratic Republic in which they severely criticized their country's Government and demanded an end to the single-party system. It would appear that their arrest in October 1990 and subsequent detention are due solely to the fact that they have freely exercised their right to express their opinions, a right which is guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights. There is no record that, in doing so, they used violence or in any way threatened national security or public order. Nor is there any allegation that they have made any defamatory or insulting remarks about their country's authorities.

12. It should be added that, as well as having been held in detention since October 1990 without charge or trial, they have never been allowed access to a lawyer, they have never been able to challenge the lawfulness of their detention before a court and they are held in complete isolation in prison as well as being unable to receive the medical care their state of health requires.

13. In the light of the above, the Working Group decides:

> The detention of Latsami Khamphoui and Thongsouk Saysangkhi is declared to be arbitrary, being in contravention of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequent upon the decision of the Working Group declaring the detention of Latsami Khamphoui and Thongsouk Saysangkhi to be arbitrary, the Working Group requests the Government of the Lao People's Democratic Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 3/1992 (LIBYAN ARAB JAMAHIRIYA)

Communication addressed to the Government of the Libyan Arab Jamahiriya on 14 October 1991.

Concerning: Al-Ajili Muhammad Abdul Rahman al-Azhari, Ali Muhammad al-Akrami, Ali Muhammad al-Qajiji, Salih Omar al-Qasbi, Muhammad al-Sadiq al-Tarhouni, Ahmad Abd al-Qadir al-Thulthi, Yusuf Hassan al-Huwayl, Najm al-Din Muhammad al-Naquzi and Sheikh Yusuf Muhammad Hussein on the one hand and the Libyan Arab Jamahiriya on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (see E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Libyan Arab Jamahiriya. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In the communication transmitted to the Government the following allegations were made:

(a) Al-'Ajili Muhammad Abdul Rahman al-Azhari, Ali Muhammad al-Akrami, Ali Muhammad al-Qajiji, Salih Omar al-Qasbi and Muhammad al-Sadiq al-Tarhouni were arrested in April 1973 and charged with membership in an illegal organization, the Islamic Liberation Party, under articles 1, 2 and 3 of Law 71 of 1972, and with carrying out activities hostile to the authorities as set forth in articles 2 and 3 of the Revolutionary Command Council decision of 11 December 1969. The five faced lengthy legal proceedings, including in camera trial before the People's Court, which sentenced them in February 1977 to between 5 and 15 years' imprisonment. Reportedly, the People's Court had special powers to follow its own procedures without abiding by the Criminal Procedure Code or Penal Code. It is alleged that the procedures of the People's Court fall short of international standards. The defendants had no right to appeal to a higher court, but judgements of the People's Court were subject to review by the Revolutionary Command Council which increased all sentences to life imprisonment. All five prisoners are believed to be held in Abu Salim Prison in Tripoli;

(b) Ahmad 'Abd al-Qadir al-Thulthi, born in 1955 in Benghazi, employee of the African Airlines Company with duty station at London Heathrow Airport, was arrested in April 1986 when he went back to Libya on a visit. Yusuf Hassan al-Huwayl, born in 1957, and Najm al-Din Muhammad al-Naquzi, born in 1956 or 1957, former employee of al-Bariqa Oil Company, were arrested in similar circumstances within a few months of each other. All three are reported to be still detained at Abu Salim Prison in Tripoli. They were denied family visits until March 1988. Apparently, Ahmad 'Abd al-Qadir al-Thulthi was again denied family visits from the beginning of 1989 until June 1991. The exact charges against them are not known to the source, but they are said to include membership of an illegal organization, sabotage and possession of weapons. They were brought before a Revolutionary Court in February 1987 which is not known to have followed any publicly known laws. The trial was apparently postponed and resumed a number of times but has not concluded;

(c) Sheikh Yusuf Muhammad Hussein, an Imam of al-Sharquiya Mosque at al-Fatih University, was arrested on 10 January 1989 in the residence halls of al-Fatih University in Tripoli by three plain-clothes security men in a car. Before he was driven away, he was apparently questioned about his religious beliefs. The exact reasons for his arrest are not known, but it is suggested that it may be because of his Islamic religious views or his connection with the Ogaden National Liberation Front (ONLF). His whereabouts are not known. It is alleged that Sheikh Yusuf Muhammad Hussein is only one of 392 political prisoners who were detained between January 1980 and April 1990, most of them because they were suspected of being active political opponents of the authorities or supporters of the opposition, particularly religious groups.

6. In the light of the above the Working Group decides:

> The detention of Al-Ajili Muhammad Abdul Rahman al-Azhari, Ali Muhammad al-Akrami, Ali Muhammad al-Qajiji, Salih Omar al-Qasbi, Muhammad al-Sadiq al Tarhouni, Ahmad Abd al-Qadir al-Thulthi, Yusuf Hassan al-Huwayl, Najm al-Din Muhammad al-Naquzi and Sheikh Yusuf Muhammad Hussein is declared to be arbitrary, being in contravention of articles 9, 10, and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which the Libyan Arab Jamahiriya is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group. As regards Al-Ajili Muhammad Abdul Rahman al-Azhari, Ali Muhammad al-Akrami, Ali Muhammad al-Qajiji, Salih Omar al-Qasbi and Muhammad al-Sadiq al-Tarhouni, the Working Group considers that their detention is also in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon its decision declaring the detention of Al-Ajili Muhammad Abdul Rahman al-Azhari, Ali Muhammad al-Akrami, Ali Muhammad al-Qajiji, Salih Omar al-Qasbi, Muhammad al-Sadiq al Tarhouni, Ahmad Abd al-Qadir al-Thulthi, Yusuf Hassan al-Huwayl, Najm al-Din Muhammad al-Naquzi and Sheikh Yusuf Muhammad Hussein to be arbitrary, the Working Group requests the

Government of the Libyan Arab Jamahiriya to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 4/1992 (MALAWI)*

Communication addressed to the Government of Malawi on 14 October 1991.

Concerning: Goodluck Mhango, Ms. Sikwese and Martin Machipisa Munthali on the one hand, and Malawi on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II) and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Malawi. In the absence of any information from the Government, the Working Group believes that it is in a

---

* By letter dated 12 November 1992 the Permanent Representative of Malawi to the United Nations addressed a letter to the Chairman-Rapporteur of the Working Group on Arbitrary Detention, in response to the above Decision. By that letter the Government of Malawi informed the Working Group as follows:

1. Martin Machipisa Munthali was released on 11 June 1992 together with seven other persons.

2. Dan Mhango was released on 11 June 1992, but it was not yet clear whether this was the person referred to in the Decision as Goodluck Mhango.

3. As regards Ms. Sikwese, no trace of that name was found in the records held at the Permanent Mission of Malawi in New York, and the Permanent Representative sought information from his capital on whether or not Ms. Sikwese was in fact ever detained.

position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In the case of Goodluck Mhango and Ms. Sikwese, the facts suggest that both were detained not on account of any opinions that they might have held. Goodluck Mhango was apparently detained on account of his journalist brother's article published in a foreign magazine, critical of the policies of the Malawi Government. Similarly, Ms. Sikwese was also detained on account of her family relationship with Fred Sikwese, her brother. She apparently alleged that the authorities were responsible for her brother's death. The case of Martin Machipisa Munthali stands on a different footing. Despite completion of his sentence in 1975, he has remained in detention without charge or trial ever since.

6. In the light of the above, the Working Group decides:

> The detention of Goodluck Mhango and Ms. Sikwese and the continued detention of Martin Machipisa Munthali cannot be justified on any legal basis. It is declared to be arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights and falling within category I of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of Goodluck Mhango, Ms. Sikwese and Martin Machipisa Munthali to be arbitrary, the Working Group requests the Government of Malawi to take the necessary steps to remedy the situation in order to bring it into conformity with the laws and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 5/1992 (SUDAN)*

> Communication addressed to the Government of the Sudan on 6 December 1991.
>
> Concerning: Yousif Hussein Mohammed (or Ahmed), Siddig Yousif Ibrahim, Mukhtar Abdallah, Abu Bakr El Amin, Sid Ahmed El Hussein and Gassim Mohammed Salih on the one hand and the Sudan on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out

---

* By note dated 7 December 1992, addressed to the Centre for Human Rights, the Permanent Mission of the Republic of the Sudan to the United Nations Office at Geneva informed the Working Group that "with regard to Decision No. 5/1992, Mr. Youssif Hussein Ibrahim has been released pursuant to Presidential Decree No. 335/92".

its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Sudan. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. It was alleged in the communication that was transmitted to the Government that:

(a) the following four Sudanese citizens were held for more than a year without charge or trial and are said to be still in detention: Yousif Hussein Mohammed (or Ahmed), a geologist and leading functionary of the Communist Party, arrested in 1989; Siddig Yousif Ibrahim, engineer, arrested in January 1990; Mukhtar Abdallah, textile worker, trade union leader and activist, arrested in July 1990; Abu Bakr El Amin, journalist, arrested in November 1990;

(b) Sid Ahmed El Hussein, Deputy General Secretary of the Democratic Unionist Party and former Deputy Prime Minister, arrested in September 1990, apparently for being involved in an alleged coup d'état, and Gassim Mohammed Salih, advocate, arrested in July 1990 and still detained at Security Headquarters. Reportedly, no charges have been brought against them.

6. In its reply to that communication, dated 24 January 1992, the Government affirmed that Yousif Hussein Ahmed, Siddig Yousif Ibrahim, Mukhtar Abdallah and Abu Bakr El Amin were all awaiting trial following charges against them in the Khartoum Police Department, and that Sid Ahmed El Hussein and Gassim Mohamed Salih were released immediately following the completion of their investigations.

7. In conformity with its methods of work, the Working Group transmitted the information supplied by the Government to the source from which the communication was received, with a request for comments or additional information. The source claimed the following: Yousif Hussein Mohammed El Amin, Mukhtar Abdallah and Abu Bakr El Amin have been held for periods ranging from 18 months to two years; they were arrested in November 1989 (except for Yousif Hussein Mohammed El Amin, whose date of arrest was reported as 13 December 1989); all of them were arrested without judicial warrants by the security forces and they have never been charged during their long detention. The four detainees (the three above-mentioned and Siddig Yousif Ibrahim) were subjected to torture in private detention centres, the so-called ghost houses, for several weeks before being transferred to the regular

Kober prison in Khartoum North; Abu Bakr El-Amin was released in February 1992. The source also confirmed that Sid Ahmed El Hussein and Gassim Mohammed Salih had been released.

8. As regards the cases of Sid Ahmed El Hussein and Gassim Mohammed Salih, the Working Group took note with appreciation of the information provided to it by the Government of the Sudan, and confirmed by the source, that these persons were released. The Working Group also took note of the information provided to it by the source regarding the release of Abu Bakr El Amin. None the less, in view of the special circumstances of the cases as described above and in keeping with paragraph 14 (a) of its methods of work, which provides: "If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the persons concerned." The Working Group therefore considers that it may take a decision on whether or not the deprivation of liberty of Abu Bakr El Amin, Sid Ahmed El Hussein and Gassim Mohammed Salih was arbitrary.

9. The Working Group considers the reply provided by the Sudanese authorities as incomplete and insufficient, as it fails to challenge the allegations regarding the violation of international norms with respect to the right to a fair trial and the allegation that the detainees have been deprived of their liberty as a result of the exercise of their rights and freedoms protected by the international legal instruments.

10. In the light of the above, the Working Group decides:

(a) The detention of Yousif Hussein Mohammed (or Ahmed), Siddig Yousif Ibrahim and Mukhtar Abdallah is declared to be arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which the Sudan is a party, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) In view of the reported release of Abu Bakr El Amin, Sid Ahmed El Hussein and Gassim Mohammed Salih, their cases are filed. Nevertheless, the Working Group decides that their detention had an arbitrary character:

(i) In the case of Abu Bakr El Amin, his detention was arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group;

(ii) In the case of Sid Ahmed El Hussein, his detention was arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on

Civil and Political Rights, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group;

(iii) In the case of Gassim Mohammed Salih, his detention was arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon its decision declaring the detention of Yousif Hussein Mohammed (or Ahmed), Siddig Yousif Ibrahim, Mukhtar Abdallah, Abu Bakr El Amin, Sid Ahmed El Hussein and Gassim Mohammed Salih to be arbitrary, and taking into account the release of the last three persons, the Working Group requests the Government of the Sudan to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 6/1992 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government of the Syrian Arab Republic on 14 October 1991.

Concerning: Riad Al Turk, and the following 59 women: Bayan Sulaiman Allaf, Laila Sulaiman al-Ali, Wafa Sulaiman al-Ali, Khadija Hussein al-Ali, Lina Muhammad Ashur, Nuha Ahmad Ismail, Hala Muhammad Fattum, Ramla Ali Abu Ismail, Huda Mustafa Kakhi, Malak Sulaiman Khaluf, Julia Matanius Mikhail, Barzan Nuri Shaikhmous, Wafa Muhammad Tarawiyya, Salwa Muhieddin Wannus, Mariam Abdul Rahman Zakariyya, May Abdul Qadir al-Hafez, Raghida Hassan Mir Hassan, Samira Ibrahim Abbas, Muna Muhammad al-Ahmad, Nadiya Muhammad Badawiyya, Salafa Ali Barudi, Fatima Muhammad Khalil, Munira Abbas Huwaija, Sahar Abbas Huwaija, Than Abdo Huwaija, Wafa Hashim Idris, Najiya Muhammad Shihab Jir'atli, Gharnata Khalid al-Jundi, Asmahan Yaseen Majarisa, Rana Ilyas Mahfudh, Sawsan Faris al-Ma'az, Hiyam Hassan al-Mi'mar, Lina Rif'at Mir Hassan, Wafa Said Nassif, Wijdan Sharif Nassif, Hiyam Sulaiman Nuh, Afaf Walim Qandalaft, Asia Abdul Hadi al-Saleh, Munira Kamil al-Sarem, Fadia Fuad Shalish, Sahar Hassan Shamma, Umayma Daoud Shamsin, Sahar Wajih al-Bruni, Rimah Ismail al-Bubu, Intisar al-Akhras, Abir Barazi, Rabi'a Barazi, Rajia Dayub, Lina Ismail, Abir Ismandar, Yasmin Istanbuli, Intisar Mayya, Valentina Qandalaft, Tawfiqa Rahil, Malaka Rumia, Sana Sa'ud, Aida Wannus, Wafa Murtada on the one hand and the Syrian Arab Republic on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication, received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegation made, the Working Group welcomes the cooperation of the Government of the Syrian Arab Republic. In the context of the information received from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of this case, taking account of the allegation and of the Government's reply.

5. The Working Group considers that:

(a) It is alleged that Mr. Riad Al Turk, aged 60 years, a lawyer by profession, has been detained without charge or trial since 28 October 1980 and has been held incommunicado and in solitary confinement following his arrest on the basis of article 4 (a) of the Law on the State of Emergency, and has been denied access to his family and to a legal counsel. He is said to be the First Secretary of the Communist Party. The allegation claims that there has been an infringement of the rights and guarantees enshrined in articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party, and principles 9, 11, 15, 19, 32 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(b) The reply of the Government of the Syrian Arab Republic disputes only one of these allegations. It maintains that Mr. Riad Al Turk's case has been referred to the courts, the charge being that he belonged to a clandestine organization lending support to terrorist groups which are involved in assassination and violence in Syria. The reply does not identify the court dealing with the charge, the organization which is described as clandestine, the terrorist group it is supporting, or the assassinations or acts of violence attributed to it. It is not denied that Mr. Riad Al Turk has been held incommunicado for many years, without visits or a legal counsel. The reply does, in any event, confirm that the detention began in October 1980;

(c) In these circumstances, the detention of the lawyer Mr. Riad Al Turk must be considered arbitrary, since it falls within category II of the categories listed in paragraph 3 of this Decision, in that it concerns the exercise of freedoms protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, in particular freedom of political association and of expression and opinion. In fact, the only reason for depriving him of his freedom seems to be his involvement in the Communist Party;

(d) Mr. Riad Al Turk's history also constitutes a case of arbitrary detention involving a grave non-observance of the right to a fair trial, since he has been denied the rights enshrined in principle 11, paragraphs 1 and 3, and principle 17 of the Body of Principles adopted in General Assembly resolution 43/173, through the failure to allow him to be heard promptly by a

judicial or other authority, the impossibility of his exercising the right of defence and the absence of judicial review of the detention order, which has continued for almost 12 years. Furthermore, unduly prolonged incommunicado detention is an infringement of principle 15 of the Body of Principles;

(e) As regards the above-mentioned 59 women, the Government, in its reply, informed the Group that they are no longer in detention. This fact was confirmed by the source.

6. In the light of the above, the Working Group decides:

(a) The detention of Mr. Riad Al Turk is declared arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, and falling within categories II and III of the principles applicable in the consideration of cases submitted to the Working Group;

(b) With regard to the above-mentioned 59 women, the Working Group, in the context of the information received by it and having applied its mind to the available information, is of the opinion that no special circumstances warrant the Group to consider the nature of the detention of those released. The Working Group, without prejudging the nature of the detention, decides to file the case of these persons under the terms of paragraph 14 (a) of its methods of work.

7. Consequent upon the decision by the Working Group declaring the detention of Riad Al Turk to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation, in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

(See also annex II, decision No. 6/1992.)

DECISION No. 7/1992 (PERU)

Communication addressed to the Government of Peru on 6 December 1991.

Concerning: Wilfredo Estanislao Saavedra Marreros on the one hand and the Republic of Peru on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question, although it was received more than 90 days after the transmittal of the letter by the

Working Group. In a note verbale dated 24 August 1992, the Government provided further information relevant to the decision in respect of this case.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegation made, the Working Group welcomes the cooperation of the Government of Peru. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on the question of torture (E/CN.4/1990/17, para. 120) pursuant to resolution 1985/33 and subsequent resolutions of the Commission on Human Rights.

6. The Working Group considers that:

(a) According to the allegation, the human rights activist and Chairman of the Committee for the Defence of Human Rights (CODEH) of Catamarca was arbitrarily detained by the police on 19 September 1989; he was apparently tortured and compelled to confess to being an activist of the Tupac Amaru Revolutionary Movement, for which he was finally sentenced, under the anti-terrorist legislation, to 10 years' imprisonment by a military correctional court. An appeal was lodged against the sentence with the Supreme Court on the grounds that the court which had handed down the sentence was not competent. Moreover, the accused was not allowed access to a defence counsel until 30 days after his arrest;

(b) With regard to the alleged torture, it is stated that the accused filed a complaint in that respect, but his complaint was not given due attention, a fact which he reported to the Supreme Court, which has still not ruled on his complaint;

(c) The communication to the Working Group alleges violations of articles 9, 10, 11 and 19 of the Universal Declaration on Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, to which Peru is a party, and principles 2, 4, 11, 17, 18 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(d) In addition to having been submitted beyond the deadline, the initial reply from the Government of Peru failed to provide sufficient information to settle this case, as it merely stated that, on account of a heavy burden of work, the Supreme Court of Peru had not yet taken a decision on the detainee's application, which in the view of the Government constitutes a delay in the administration of justice, and not a denial of justice;

(e) In its second reply, the Government of Peru reports that on 16 June 1992 the Supreme Court declared the prisoner's appeal to be unfounded, as the sentence handed down by the Catamarca court was not void;

(f) In order to settle the complaint it is necessary to distinguish three phases, corresponding to different moments of the deprivation of freedom. These are the arrest itself, the torture, and the sentence as a result of which this person is currently deprived of his freedom;

(g) With regard to the arrest or detention referred to in article 9, paragraphs 2 and 3 of the International Covenant on Civil and Political Rights and principle 2 of the Body of Principles, it is certain that although the police may have acted without a prior warrant, the person in question was brought before the court without there being any suggestion that this was done beyond the legal deadline, and the court confirmed the detention by the police, in view of which there appears to be no justification for the allegation of arbitrary detention;

(h) The complaint regarding torture has already been examined by the Special Rapporteur appointed by the Commission on Human Rights to deal with torture, who has already produced the report mentioned in paragraph 5 of this decision. The Special Rapporteur stated that a special commission headed by the Dean of the Medical Association "had found that Dr. Saavedra's wrists bore marks of having been bound and there were contusions on his body". Accordingly, it is not appropriate for the Working Group on Arbitrary Detention to pronounce on a matter which has already been dealt with by another organ of the Commission;

(i) Dr. Saavedra is currently deprived of his liberty as a result of a sentence handed down by a court. Two questions arise in respect of this sentence: the competence of the court and the fact that it took into consideration a confession which Dr. Saavedra was compelled to sign under torture;

(j) As to the first point, it is clear that under Peruvian legislation the offence for which he was tried comes within the competence of the military courts, and in any case, the issue has already been examined by the Supreme Court, which decided on 16 June 1992 that the sentence was not void on grounds of lack of competence;

(k) With regard to the use of a statement obtained under torture, there is no evidence to justify a finding by the Working Group that this allegation has been proved;

(l) The communication itself does not indicate in what manner the provisions of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights regarding freedom of expression and opinion have been contravened.

7. In the light of the above, the Working Group decides:

The detention of Wilfredo Estanislao Saavedra Marreros is declared not to be arbitrary.

DECISION No. 8/1992 (MYANMAR)

Communication addressed to the Government of Myanmar on 14 October 1991.

Concerning: U Nu and Aung San Suu Kyi on the one hand and Myanmar on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. It is alleged in the communications submitted by the source that U Nu, the 84-year-old former Prime Minister of Myanmar, has been detained under house arrest, together with his wife, since 29 December 1989 for refusing to resign from a "parallel government", formed by him in August 1988 on the ground that he had been elected in the last national elections of 1960. According to the source, U Nu is held under the administrative detention provisions of the 1975 State Protection Law. It is further alleged that he has not been charged or tried and has no opportunity to challenge his detention before a court and that he has never been brought before a judge. He is reported to be held in almost complete isolation from the outside world.

6. Aung San Suu Kyi has reportedly also been detained under house arrest without charge or trial since 20 July 1989. According to the source, she is one of the founders of the National League for Democracy (NLD), which was formed in 1988. As General Secretary of the NLD, she allegedly called for non-violent resistance to martial law imposed on the country after September 1988. Aung San Suu Kyi is reported to be held under the administrative detention provisions of the 1975 State Protection Law. She is said to be detained under constant armed guard at her family home, in almost complete isolation from the outside world.

7. According to the source, U Nu and Aung San Suu Kyi are prisoners of conscience, detained solely for the peaceful exercise of their rights to freedom of expression and assembly, rights which are guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights.

8. By letter dated 30 December 1991, addressed to the Chairman of the Working Group, the authorities of Myanmar replied to the allegations contained in the above-mentioned communication, stating that U Nu and Daw Aung San Suu Kyi were placed under restraint in accordance with section 10, subsection (b) of the 1975 "Law to Safeguard the State against the Dangers of those desiring to cause Subversive Acts". This 1975 State Protection Law was enacted in January 1975 by the First Pyithu Hluttaw (National Assembly) at its first special session. The main objective of the said Law is to prevent the infringement of the sovereignty and security of the State or public peace and tranquillity. It is aimed at taking action only against those desiring to cause subversive acts against the State.

9. After explaining in detail the provisions of the 1975 State Protection Law, the Myanmar authorities point out that Daw Aung San Suu Kyi was placed under restraint on the morning of 20 July 1989 for infringement of the 1975 State Protection Law. In particular, she created situations that endangered the State; she tried to cause division between the Tatmadaw (armed forces) and the people, and engaged in activities (inciting) hatred of the people towards the Tatmadaw. She allegedly did this in various speeches and press conferences during which she described the army and Government as "Fascist" and falsely accused the army of having killed eight youths, whereas, in reality, the army, during an operation against KIA (Kachin Independence Army) insurgents, captured eight insurgents. Later, in attacking an enemy camp where some 20 KIA insurgents and 10 insurgent youths had taken refuge, four KIA insurgents and three insurgent youths were killed. Two insurgent youths who were captured earlier (among the eight) and who had guided the Tatmadaw to that KIA camp were also killed. This allegation, contrary to fact, demonstrates that Daw Aung San Suu Kyi deliberately told a lie so that the people would have resentment against the Tatmadaw, causing division between the people and the Tatmadaw and also, at the same time, to demoralize the Tatmadaw, thus adversely affecting its fighting capabilities.

10. As regards U Nu, the authorities state that he was placed under restraint for having issued an announcement declaring that he had resumed the power of Prime Minister with effect from the morning of 9 September 1988. This was followed by his press release 1/88 of 22 September 1988 in which he stated that he had formed the Government of the Union of Myanmar on 19 September 1988, led by him. The press release also stated that the Government of General Saw Maung was illegal; that his (U Nu's) Government was legal since it was internationally recognized. The press release also declared that the Tatmadaw need not take orders from the military government as the people had turned against the military government and that the Tatmadaw should take orders from his (U Nu's) Government. On 23 September 1988, he issued a "Statement to the Tatmadaw" and signed it as Prime Minister U Nu. The statement mentioned that "the legal government led by U Nu has been reconstituted on 19 September 1988 and that the members of the Tatmadaw should part with the military dictators and that they should embrace the people". U Nu's statements that he had formed a parallel government are in a way more serious and worse than the actions of insurgents who had taken up arms against the Government. His actions amounted to grave subversive acts against the Government. The authorities concerned made two requests on 29 November 1989 and 22 December 1989, respectively, to U Nu, asking him to abolish his so-called parallel government. U Nu refused to abolish or resign from his

parallel government, thus infringing section 124 (a) of the Penal Code as well as section 5 (a), (b) and (j) of the 1950 Emergency Provisions Act. Although much sterner action could have been taken against U Nu, in accordance with the above-stated laws, the authorities concerned decided to take a much more lenient action under section 10, subsection (b), of the 1975 State Protection Law. This much more lenient action was taken against him in view of the political role he has played for the country and in consideration of his advanced years and on humanitarian grounds.

11. According to the Government of Myanmar, legal action is taken against Daw Aung San Suu Kyi and U Nu under section 10, subsection (b) of the 1975 State Protection Law. Under this provision, arrest or detention is avoided and only restriction of movements and outside contacts of the person concerned is imposed.

12. In conclusion, the Government of Myanmar affirms that Daw Aung San Suu Kyi and U Nu were placed under restraint for infringements of section 10, subsection (b), of the 1975 Law to Safeguard the State against the Dangers of those desiring to cause Subversive Acts (the 1975 State Protection Law). They were not arbitrarily detained as alleged.

13. It appears from the Government's reply that it confirms that U Nu and Daw Aung San Suu Kyi have been placed under house arrest for having criticized the Government of Myanmar and, in the case of U Nu, for having wished its replacement by the parallel government set up by him.

14. It has not been reported that, by doing so, U Nu and Daw Aung San Suu Kyi have resorted to violence, or have incited to violence, or that they have threatened, in any way whatsoever, the national security or the public order. It therefore appears that the measure applied to them is based solely on the fact that they had freely and peacefully exercised their rights to freedom of opinion, expression and association, rights that are guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights.

15. The Working Group considers that the measure of house arrest applied, particularly with regard to Daw Aung San Suu Kyi, who is restricted to her family home, which she cannot leave due to the constant presence of an armed guard, is a deprivation of liberty equivalent to a detention, which, in addition, has an arbitrary character, falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group, since this measure is based, as mentioned above, on the exercise by that person of her rights and freedoms guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and by articles 19 and 21 of the International Covenant on Civil and Political Rights.

16. In addition, it is clear that both U Nu and Daw Aung San Suu Kyi have been held since 1989 without charge or trial, that they have never had access to counsel, that they could never challenge their deprivation of liberty before a court, and that they have been held in almost complete isolation from the outside world. It therefore appears that articles 9, 10 and 11 of the

Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights have been violated. These articles contain guarantees of the right to a fair trial by providing that no one shall be subjected to arbitrary arrest, detention or exile, and that everyone charged with a penal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal, to be tried without undue delay, and to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing. Similar guarantees are also embodied in principles 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

17. As regards the case of U Nu, the Working Group took note with appreciation of the information provided to it by the Government of Myanmar by letter dated 3 June 1992, and reiterated in a statement made before it by the Permanent Representative of Myanmar to the United Nations Office at Geneva on 29 September 1992, confirming the release of U Nu from house arrest on 25 April 1992. Nonetheless, in view of the special circumstances of the case as described above, and in keeping with paragraph 14 (a) of its methods of work, which provides, "if the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a-case-by-case basis, whether or not the deprivation of liberty was arbitrary. Notwithstanding the release of the person concerned". The Working Group therefore considers that it may take a decision on whether or not the deprivation of liberty of U Nu was arbitrary.

18. In the light of the above the Working Group decides:

> The detention of U Nu and Daw Aung San Suu Kyi is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

19. Consequent upon its decision declaring the detention of U Nu and Daw Aung San Suu Kyi to be arbitrary, and taking into account the release of U Nu from house arrest, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 9/1992 (CUBA)

> Communication addressed to the Government of Cuba on 14 October 1991.
>
> Concerning: Alexis Maestre Savorit on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the

Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) The allegation merely states that Alexis Maestre Savorit was detained at Manzanillo in June 1990 and is currently in Bayamo prison, Granma Province;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that Mr. Maestre is serving a 12-year prison sentence handed down by the People's Provincial Court in Santiago de Cuba for various offences of enemy propaganda, without indicating the acts constituting the offence;

(d) The report of the Special Representative of the Secretary-General does not mention this situation;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(f) In the absence of any further information the Working Group takes it that Mr. Maestre is deprived of his liberty as a result of the sentences indicated by the Government;

(g) The Government has not provided any details of the acts in which Mr. Maestre allegedly took part, but has merely indicated that his conviction is justified on the grounds of "enemy propaganda";

(h) Nor does the allegation put forward convincing evidence for a finding that the detention is arbitrary;

(i) The methods of work adopted by the Group provide that if it does not have enough information to take a decision, the case remains pending for further investigation and if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action.

7. In the light of the above, the Working Group decides:

To file the case of Alexis Maestre Savorit without further action.

DECISION NO. 10/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Juan Enrique García Cruz and Ramón Obregón Sarduy on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Group also expresses it appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) The allegation merely indicates that Juan Enrique García Cruz and Ramón Obregón Sarduy, members of the Pro Arte Libre Association, are in prison;

(b) The Government states that García is in prison after being sentenced, in case 32/79 before the People's Provincial Court of Santiago de Cuba, to 13 years' imprisonment for offences of robbery with violence and other acts against State security, and completes his sentence on 14 April 1992;

(c) In respect of Obregón, the Government states that he was initially sentenced for leaving the national territory illegally and was released on 2 August 1987. The benefit of this measure was revoked when he committed a further offence of criminal association. The organization concerned planned to hold an "exhibition of dissident art" to which foreign diplomats and journalists would be invited and would then be attacked with a firearm, with the authorities receiving the blame. For the latter offence he was sentenced to nine months' imprisonment, and the cumulative sentences for his offences will be completed on 19 September in the year 2000;

(d) The report of the Special Representative of the Secretary-General does not mention this situation;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992 but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that Mr. García and Mr. Obregón were given the sentences mentioned by the Government;

(g) In respect of García, it is to be understood that the sentence of 13 years' imprisonment imposed in case 32/79 was completed on 14 April 1992 and the Working Group therefore believes that he has been released. Consequently, in accordance with the Group's methods of work, the communication should be filed;

(h) Neither the allegation nor the Government's reply provide convincing evidence for a finding that Obregón's detention was arbitrary or otherwise. Neither the date or place of his arrest, nor the circumstances in which the attack on the projected "exhibition of dissident art" was to occur, nor the degree of seriousness of the crime nor the involvement of Obregón Sarduy are established. Consequently, in accordance with the Group's methods of work, the case should be filed without further action, unless convincing new evidence is forthcoming.

7. In the light of the above, the Working Group decides:

(a) To file the case of Juan Enrique García Cruz since he has been released;

(b) To file the case of Ramón Obregón Sarduy without further action.

(See also annex II, Decision No. 10/1992.)

DECISION No. 11/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Juan Mayo Méndez on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group. The Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Juan Mayo Méndez was detained in January 1990 and sentenced to six years' imprisonment;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that Mr. Mayo Méndez is in prison accused of the offence of subversive propaganda, without saying that he has been sentenced;

(d) The report of the Special Representative of the Secretary-General mentions this situation, indicating that, according to the reports received, this person was caught writing anti-Government slogans;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992 but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that the act for which Mr. Mayo Méndez is being detained is wall-writing;

(g) Wall-writing should be considered as a manifestation of the freedom of opinion and expression provided for in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights;

(h) The principles for classifying detention as arbitrary, as laid down in paragraph 3 of this decision, indicate that arbitrary detention under category II is constituted by detention deriving from facts concerning the exercise of particular fundamental human rights, including the right established in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights;

(i) The discrepancy between the source and the Government as to whether or not a trial has taken place does not make it possible to pronounce on whether, in this case, there are grounds for a finding of arbitrary detention based on a delay in trial proceedings, in accordance with the provisions of principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights.

7. In the light of the above, the Working Group decides:

> The detention of Juan Mayo Méndez is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Juan Mayo Méndez to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 12/1992 (CUBA)

(See also annex II, Decision No. 12/1992.)

DECISION No. 13/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Daniel Azpillaga Lombard, Tomás Azpillaga, Basilio Alexis López and Rigoberto Martínez Castillo on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Daniel Azpillaga Lombard, Tomás Azspillaga, Basilio Alexis López and Rigoberto Martínez Castillo were detained at Havana on 6 September 1991 and were tried on charges of which they were not informed, with sentences of between 10 months' and 2 years' imprisonment being requested against them;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that those accused in case 3469/91 were sentenced to the following prison terms: Daniel Azpillaga, 2 years; Tomás Azpillaga, 10 months; Rigoberto Martínez, 11 months; and

Basilio Alexis López, 10 months. The three last-named ought to have completed their sentences on 5 July or 5 August 1992. The ground for the sentences is the offence of "creating a public disturbance";

(d) The report of the Special Representative of the Secretary-General mentions this situation, indicating that, according to the reports received, the persons to whom this decision refers were detained "during a demonstration in front of the Villa Marista (State Security) in Havana on 6 September 1991 calling for the release of all political prisoners". They are said to have been charged with creating a public disturbance;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992 but no response has yet been received;

(f) The Government has not accused the detainees of any act of violence or other such act. On the contrary, it has merely indicated that the penalty is "for the offence of creating a public disturbance", a vague accusation which does not warrant detention. The information provided by the Special Representative, as mentioned above, suggests, that the four persons concerned were arrested because of their participation in a demonstration calling for the release of political prisoners, which constitutes a legitimate exercise of the right of freedom of assembly and freedom of expression and opinion;

(g) In accordance with the criteria of the Working Group, as set out in paragraph 3 of this decision, detention is arbitrary if the facts giving rise to it concern the exercise of particular rights recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, such as those mentioned in paragraph 3 above (category II);

(h) In the absence of any further information, the Working Group takes it that Tomás Azpillaga and Basilio Alexis López have been free since 5 July 1992 and Rigoberto Martínez since 5 August 1992, having been released on completion of their sentences;

(i) The methods of work adopted by the Group provide that, if the person concerned has been released for whatever reason since the Group took up the case, the case is filed. Although the Group, at its third session, reserved the right to decide on a case-by-case basis on the arbitrariness or otherwise of the deprivation of liberty, the lack of information from the source does not allow it to do so in the present situation.

7. In the light of the above, the Working Group decides:

(a) To file the cases of Tomás Azpillaga, Basilio Alexis López and Rigoberto Martínez Castillo since these persons have been released;

(b) The detention of Daniel Azpillaga Lombard is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Daniel Azpillaga Lombard to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

(See also annex II, decision No. 13/1992.)

DECISION No. 14/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Agustín Figueredo on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group. The Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) The allegation merely states that Agustín Figueredo is being held at Las Mangas prison, Bayamo;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that Mr. Figueredo is in prison serving a sentence, which is due to be completed in the year 2013, imposed by the People's Provincial Court of Santiago de Cuba for various offences of enemy propaganda, without indicating the acts constituting the offence;

(d) The report of the Special Representative of the Secretary-General does not mention this situation;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992 but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that Mr. Figueredo is deprived of his liberty and is serving the sentence mentioned by the Government;

(g) The Government has not specified the facts constituting the offence of "enemy propaganda";

(h) The allegation, too, fails to provide convincing evidence that the detention is arbitrary;

(i) The methods of work adopted by the Group provide that, if it does not have enough information to take a decision, the case remains pending for further investigation and, if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action.

7. In the light of the above, the Working Group decides:

To file the case without further action.

DECISION No. 15/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Amador Blanco Hernández on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) The allegation merely states that Amador Blanco Hernández, a human rights activist, has been detained since May 1990, having been sentenced to three and half years imprisonment on a charge of "illegally leaving the country for political reasons";

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that the person concerned is in prison serving a three-year sentence handed down by the People's Provincial Court of Villa Alegre for the ordinary offence of unlawful entry;

(d) The report of the Special Representative of the Secretary-General, pursuant to reports received, gives a third version of the case, maintaining that Mr. Hernández is a member of the José Martí National Human Rights Committee "arrested on 14 May 1990 as human rights activist and released, under house arrest, pending his trial on the charge of 'unlawful entry into a neighbour's house'";

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that Mr. Blanco is in prison, serving the sentence referred to by the Government, but has no means of determining whether or not the detention is arbitrary;

(g) The allegation, too, fails to provide convincing evidence that the detention is arbitrary;

(h) According to the methods of work adopted by the Working Group, if it does not have enough information to take a decision, the case remains pending for further investigation and, if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action.

7. In the light of the above, the Working Group decides:

To file the case without further action.

DECISION No. 16/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Pedro Alvarez Martínez on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter of the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) The allegation merely states that Pedro Alvarez Martínez was arrested in December 1989 and sentenced to five years' imprisonment for printing unlawful publications and other offences;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that the person concerned is in prison serving a five-year sentence imposed by the People's Provincial Court of Havana for the offence of "other acts against State security", without indicating the acts constituting the offence;

(d) The report of the Special Representative of the Secretary-General maintains that Mr. Alvarez is a member of the Partido Pro Derechos Humanos sentenced to five years' imprisonment for printing unlawful publications;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that Mr. Alvarez is in prison serving the sentence referred to by the Government, but does not have information enabling it to determine whether or not arbitrariness is involved;

(g) Mr. Alvarez's conduct, which is not disputed by the Government, is said to have been participation in the production or distribution of illegal printed matter. The Working Group considers such conduct as a legitimate exercise of the freedom of expression and opinion embodied in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and therefore considers the detention arbitrary, within the meaning of category II of paragraph 3 of this decision.

7. In the light of the above, the Working Group decides:

> The detention of Pedro Alvarez Martínez is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Pedro Alvarez Martínez to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 17/1992 (CUBA)

> Communication addressed to the Government of Cuba on 14 October 1991.
>
> Concerning: Julio Araña Rosainz and Julio Bientz Saab on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the

Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter of the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Julio Araña Rosainz and Julio Bientz Saab were arrested on 2 October 1990 and sentenced on 9 July 1991 to terms of 8 and 12 years' imprisonment for offences against State security and enemy propaganda;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and Principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the persons concerned are in prison serving sentences of 8 and 12 years' for a terrorism offence involving the organization of a bomb attack in the hospital where they worked;

(d) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, these persons were tried without the guarantees of due process of law, in that no evidence whatever was presented and the charge was based solely on the assertion that the two accused admitted responsibility;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that Mr. Araña and Mr. Bientz are in prison serving the sentences referred to both by the Government and in the allegation;

(g) The Government has provided no evidence that the detainees participated in an act of terrorism and has given no indication of whether the act was carried out or whether it went no further than the proposal, conspiracy or attempt stage, or of the date or circumstances surrounding this very serious act;

(h) The allegation fails to provide convincing evidence that the detention is arbitrary;

(i) The Working Group's methods of work provide that, if it does not have enough information to take a decision, the case remains pending for further investigation and that, if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action.

7. In the light of the above, the Working Group decides:

To file the cases without further action.

DECISION No. 18/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Miguel Angel Sordo Quintanilla on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter of the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Miguel Angel Sordo Quintanilla was arrested on 2 June 1991, having been caught painting anti-Government slogans on walls, placed in custody and interrogated on a charge of "enemy propaganda";

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and Principles 11 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the person concerned is in detention awaiting trial on a charge of contempt of authority;

(d) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, the person in question was caught painting anti-Government slogans on a wall in Havana on 22 June 1991;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that the act for which Mr. Sordo is being held is wall-writing. The assertion that the charge is one of "contempt of authority", with no indication of the facts or denial of those cited by the source, leads the Working Group to believe that the facts given by the source are accurate;

(g) Wall-writing must be considered as a manifestation of freedom of opinion and expression, as provided for in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights;

(h) According to the principles for categorizing detention as arbitrary, as referred to in paragraph 3 of this decision, arbitrary detention under category II is detention deriving from acts involving the exercise of particular fundamental human rights, including those established in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

7. In the light of the above, the Working Group decides:

The detention of Miguel Angel Sordo Quintanilla is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Miguel Angel Sordo Quintanilla to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 19/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Armando Rodríguez Rodríguez and Alfredo Yáñez Márquez (or Wilfredo Llanes Márquez) on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Armando Rodríguez Rodríguez and Alfredo Yáñez Márquez were arrested on 21 March (no year is given) and are awaiting trial on charges of enemy propaganda;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the

International Covenant on Civil and Political Rights, and principles 11 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the persons concerned are serving prison sentences, having been convicted of the offence of enemy propaganda, but without indicating the acts constituting the offence. Rodríguez was sentenced to four years' imprisonment and Yáñez (or Llanes) to three;

(d) The report of the Special Representative of the Secretary-General does not mention this situation;

(e) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(f) In the absence of any further information, the Working Group takes it that Mr. Rodríguez and Mr. Yáñez (or Llanes) are in prison, serving the sentences mentioned by the Government;

(g) The Government has not specified the acts constituting the offence of "enemy propaganda";

(h) The allegation fails to provide convincing evidence that the detention is arbitrary;

(i) The methods of work adopted by the Group provide that, if it does not have enough information to take a decision, the case remains pending for further investigation, and, if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action.

7. In the light of the above, the Working Group decides:

To file the cases without further action.

DECISION No. 20/1992 (CUBA)

(See annex II, Decision No. 20/1992.)

DECISION No. 21/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Esteban González González, Manuel Pozo Montero, Arturo Valentín Montané Ruiz, Manuel de la Caridad Regueiro Robaina and Isidro Daniel Ledesma Quijano on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the

Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to resolution 1991/68 of the Commission on Human Rights (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Esteban González, Manuel Pozo, Arturo Montané, Manuel Regueiro and Isidro Ledesma were arrested between 23 and 24 September 1989 and sentenced to three to six years' imprisonment or three years' limited freedom for offences against State security. The communication adds that all those concerned are members of the Democratic Movement (MID);

(b) According to the allegation, articles 9, 10, 11 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the individuals concerned are in prison, having been convicted of taking part in a rebellion carried out by a subversive group led by González, and are serving the following sentences: González, seven years (to be completed in 1996); Pozo, five years; Montané, three years; and Reguiero, five years;

(d) No information has been provided about Isidro Ledesma;

(e) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, the persons concerned - together with Mario Jesús Fernández Mora, who was released on 19 March 1991 - are serving the sentences in question "for

organizing a political movement which opposes the regime". The Special Representative adds that Montané and Regueiro were split up and transferred on a number of occasions to various prisons;

(f) The report also says that Ledesma has been sentenced to three years' house arrest;

(g) The Government's reply was transmitted to the source of the communication in February 1992, but no response has yet been received;

(h) In the absence of any further information, the Working Group takes it that the persons concerned are serving the sentences mentioned by the Government and that Ledesma has been sentenced to three years' house arrest;

(i) Since the Government has provided no information concerning the charges brought against the individuals concerned, stating only that they were convicted of "rebellion" and "joining a subversive group", the Working Group accepts that the grounds for the conviction were that the individuals had organized a political movement opposed to the regime, as stated both in the report of the Special Representative of the Secretary-General of the United Nations, and in the allegation received by the Group;

(j) Forming a political party is a legitimate exercise of the freedom of association and is a manifestation of the freedoms of opinion and expression. Consequently, the imprisonment of the persons concerned constitutes arbitrary detention under category II, as referred to in paragraph 3 of this decision;

(k) According to deliberation 01 adopted by the Working Group on 23 March 1992, house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.

7. In the light of the above, the Working Group decides:

> The detention of Esteban González González, Manuel Pozo Montero, Arturo Valentin Montané Ruiz, Manuel de la Caridad Regueiro Robaina and Isidro Daniel Ledesma Quijano is declared to be arbitrary, being in contravention of articles 9, 11, 19 and 20 of th Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 22/1992 (CUBA)

(See annex II, Decision No. 22/1992.)

DECISION No. 23/1992 (CUBA)

(See annex II, Decision No. 23/1992.)

DECISION No. 24/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Luis Enrique Linancero Martínez, Ivelise Camejo Moleiro, Miguel Angel Fernández Crespo, José Luis Martínez Vidal, Francisco Rosado Torres, Guillermo Campos Muñiz, Ares Nasco Marrero, Guillermo Zenón Santos Davilla, Juan Carlos Sierra Pérez, Moisés Ariel Vialart del Valle, María Margarita García Valdés on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Luis Enrique Linancero, Ivelise Camejo, Miguel Angel Fernández, José Luis Martínez, Francisco Rosado, Guillermo Campos, Ares Nasco, Guillermo Santos, Juan Carlos Sierra, Moisés Ariel Vialart and María Margarita García were arrested in January 1990,

brought before the People's Provincial Tribunal of the City of Havana, convicted by the court of offences against State security and given sentences ranging from three years' limited freedom to eight to 15 years' imprisonment. The communication adds that all those concerned are members of the Youth Association for Human Rights (AJPDH);

(b) According to the allegation, articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the persons concerned were imprisoned for their participation in the Youth Association for Human Rights, "an organization which planned various acts of sabotage and terrorist activities, and explosives and other equipment used for such activities were confiscated from them on their arrest". They were tried in 1990 and sentenced to the following terms of imprisonment: Linancero, Camejo, Fernández (the latter was also given a four-year prison term for an ordinary offence), Martínez and Sierra, 15 years; Rosado, 10 years; Campos and Nasco, eight years;

(d) The Government also states that Santos, Vialart and Margarita García received non-custodial sentences, and were therefore released;

(e) The report of the Special Representative of the Secretary-General mentions this case and indicates that, according to the reports received, the persons concerned may not have enjoyed full judicial guarantees of due process and may not have had access to defence lawyers; the report points out that "although there is little information about the trial, it seems that the accused denied being involved in violent activities". According to the allegation received by the Special Representative, the Youth Association for Human Rights is believed by the authorities "to be the armed wing of the Cuban Party for Human Rights (PPDHC)";

(f) The report adds that Ledesma has been sentenced to three years' house arrest;

(g) In the absence of any further information, the Working Group takes it that the persons in question are serving the sentences mentioned by the Government, and that Santos, Vialart and Margarita García have been released;

(i) Since the Government has not provided specific information concerning the charges made against the persons in question, stating only that they were planning attacks and were found in possession of explosives, and since the source also fails to provide firm evidence that they were convicted solely for exercising the rights of political association and freedom of expression and opinion, it is impossible to state with any certainty whether or not their detention is arbitrary;

(j) Nor is it possible to take any decision concerning the allegations of failure to provide judicial guarantees, which are denied by the Government

in its report, which notes that in all the proceedings referred to in the communication from the Working Group of 14 October 1991 the accused had access to defence lawyers and enjoyed the appropriate judicial guarantees;

(k) The methods of work adopted by the Group provide that if it does not have enough information to take a decision, the case remains pending for further investigation and that, if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action;

7. In the light of the above, the Working Group decides:

(a) To file the cases of Moisés Ariel Vialart del Valle, Guillermo Zenón Santos Davilla and María Margarita García Valdés, since these persons are at liberty;

(b) To file the cases of Luis Enrique Linancero, Ivelise Camejo, Miguel Angel Fernández, José Luis Martínez, Francisco Rosado, Guillermo Campos, Ares Nasco and Juan Carlos Sierra, without further action. (See also annex II, Decision No. 24/1992.)

DECISION No. 25/1992 (CUBA)

(See annex II, Decision No. 25/1992.)

DECISION No. 26/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Rubén Hoyos Ruiz, Miriam Aguilera, Ernesto Díaz Nodarse, Félix Rodríguez Ramírez, Fidel Vila, Leonelma Madiedo, Omar Pérez, Nérida Pérez Fuentes, Juan Ramón Llorens and Abelardo Ferreiro Alvarez on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. It also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Rubén Hoyos Ruiz, Miriam Aguilera, Ernesto Díaz Nodarse, Félix Rodríguez Ramírez, Fidel Vila, Leonelma Madiedo and Omar Pérez, all from Sagua La Grande, Nérida Pérez Fuentes, Juan Ramón Llorens and Abelardo Ferreiro Alvarez were arrested on 22 March 1990 and in September were given sentences ranging from 18 months' limited freedom to 6 years' imprisonment. It is added that they are all members of the Cuban Committee for Human Rights (CCPDH);

(b) According to the allegation, articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that "in case No. 6 of 1991 before the People's Provincial Court of Villa Clara, a group of persons engaged in the preparation and distribution of pamphlets and other forms of incitement against the social order were arrested". The persons concerned received the following sentences: (i) Rubén Hoyos, six years; (ii) Félix Rodríguez, four years; (iii) Fidel Vila Linares, five years; (iv) Omar Pérez Morales, two years; (vi) Juan Ramón Llorens Herneta, one year and six months, a sentence which expired on 17 June 1992;

(d) The Government adds that the case contains no record of prison sentences for Miriam Aguilera, Ernesto Díaz, Leonelma Madiedo, Nérida Pérez Fuentes and Abelardo Ferreiro;

(e) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, Mr. Hoyos Ruiz was sentenced for "unlawful association and subversive propaganda". Confirmation that Miriam Aguilera is at liberty ("reported to have been arrested ...") may also be deduced from the Special Representative's report, and also Abelardo Ferreiro ("Jacinto Abelardo Tenreiro Alvarez ... on 22 March 1990 he is reported to have been arrested, together with other members of the Committee ..."). As regards Leonelma or Leonela Madiedo, the Special Representative refers to "Leonel Madiedo" as a member of the same Committee arrested on the same day and reported to be awaiting trial accused of enemy propaganda;

(f) The report adds that Ledesma was sentenced to three years' house arrest;

(g) The Government has not accused the detainees of any act constituting violence or other act of this kind. It has merely stated that they were sentenced "for preparing and distributing pamphlets and other forms of incitement against the social order";

(h) The preparation and distribution of pamphlets constitutes a legitimate exercise of the freedom of expression and opinion recognized in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Since it is mentioned that all the detainees are members of the Cuban Committee for Human Rights, the Working Group concludes that freedom of association, recognized by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights, is also affected in this case;

(i) According to the methods of work of the Working Group, as referred to in paragraph 3 of this decision, detention deriving from acts constituting the exercise, inter alia, of the rights to freedom of expression and opinion and association is arbitrary;

(j) In the absence of any further information, the Working Group takes it that Miriam Aguilera, Ernesto Díaz, Leonela or Leonelma Madiedo, Nérida Pérez and Abelardo Ferreiro did not receive sentences and are at liberty, and that Juan Ramón Llorens is also free, having been released on completing his sentence on 17 June 1992;

(k) The methods of work adopted by the Working Group provide that if the person has been released, for whatever reason, since the Working Group took up the case, the case if filed. Although the Working Group at its third session reserved the right to decide on a case-by-case basis on the arbitrariness or otherwise of detention, the complete lack of information from the source does not allow it to do so in the present situation.

7. In the light of the above, the Working Group decides:

(a) The cases of Miriam Aguilera, Ernesto Díaz Nodarse, Leonela or Leonelma Madiedo, Nérida Pérez Fuentes, Abelardo Ferreiro Alvarez and Juan Ramón Llorens are filed since these persons are at liberty;

(b) The detention of Rubén Hoyos Ruiz, Félix Rodríguez Ramírez, Fidel Vila and Omar Pérez is declared to be arbitrary, being in contravention of articles 9, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the persons mentioned above to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the

situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

(See also annex II, Decision No. 26/1992.)

DECISION No. 27/1992 (CUBA)

(See annex II, Decision No. 27/1992.)

DECISION No. 28/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Aurea Feria Cano, Jesús Contreras, Adolfo González Cruz, Mayra González Linares and Enrique Martínez Martínez on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses it appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Aurea Feria Cano, Jesús Contreras, Adolfo González Cruz, Mayra González Linares and Enrique Martínez Martínez were arrested on 22 January 1990 and sentenced on 13 November to prison terms ranging from two to five years. It is added that they are members of the "Indio Feria Democratic Union";

(b) According to the allegation, articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights have been violated in this case;

(c) The Government states that the detainees "were part of the 'Indio Feria' counter-revolutionary group, with which they engaged in the preparation and distribution of enemy propaganda". It indicates that the detainees were sentenced in case No. 26 of 1990 by the People's Provincial Court of the City of Havana to the following prison terms: (i) Aurea Feria Cano, five years; (ii) Jesús Contreras Milán, six years; (iii) Luis Enrique Martínez, three years; and Adolfo González, two years, a sentence due to run until 11 April 1992. However, the last-mentioned was released from prison on 12 July 1991 for good conduct;

(d) The Government adds that Mayra González did not receive a prison sentence and is at liberty;

(e) The report of the Special Representative of the Secretary-General states that Aurea Feria had already been detained for four days from 25 December 1989 accused of attempting to obtain asylum in embassies of socialist countries. The report states that Jesús Contreras, Adolfo González, Mayra González and Enrique Martínez are members of the Indio Feria Democratic Union and that they are still in prison serving sentences for the offence of "enemy propaganda";

(f) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(g) The Government has accused the detainees of acts constituting a legitimate exercise of the rights of association ("forming part of a group" described as counter-revolutionary) and freedom of expression and opinion (preparation and distribution of propaganda which the Government considers to be enemy propaganda). The Government report does not provide any grounds for concluding that the group is counter-revolutionary, nor does it indicate what would constitute a counter-revolutionary group or to what enemy the propaganda prepared and distributed refers;

(i) According to the Working Group's methods of work, as referred to in paragraph 3 of this decision, detention deriving from acts constituting the exercise of, inter alia, the rights to freedom of expression and opinion and association is arbitrary;

(j) In the absence of any further information, the Working Group takes it that Mayra González did not receive a sentence and is at liberty and that Adolfo González Cruz has also been free since 12 July 1991 following the commutation of his sentence;

(k) The methods of work adopted by the Working Group provide that if the person has been released, for whatever reason, since the Working Group took up the case, the case if filed. Although the Working Group at its

third session reserved the right to decide on a case-by-case basis on the arbitrariness or otherwise of detention, the complete lack of information from the source does not allow it to do so in the present situation.

7. In the light of the above, the Working Group decides:

(a) The cases of Mayra González Linares and Adolfo González Cruz are filed since these persons are at liberty;

(b) The detention of Aurea Feria Cano, Jesús Contreras and Enrique Martínez Martínez is declared to be arbitrary, being in contravention of articles 9, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the persons mentioned above to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

(See also annex II, Decision No. 28/1992.)

DECISION No. 29/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Jorge Quintana and Carlos Ortega on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found it to be admissible in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group

believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, had also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Jorge Quintana and Carlos Ortega were arrested on 7 November 1990 and sentenced to three years' limited freedom for offences against State security;

(b) According to the allegation, articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated in this case;

(c) The Government states that Quintana Silva was sentenced to a non-custodial penalty for the offence of "other acts against State security"; "however, since the conditions and requirements of the penalty were infringed, the measure was revoked by the People's Provincial Court of the City of Havana and replaced by one of imprisonment for the time remaining until completion of the sentence on 3 March 1993";

(d) The Government states, with respect to Ortega Piñero, that he was sentenced to one year's limited freedom - but not to imprisonment; he completed his sentence on 3 January 1991 and is now free;

(e) The report of the Special Representative of the Secretary-General mentions this situation and indicates that, according to the reports received, Quintana was sentenced for "enemy propaganda" and Ortega sentenced to three years' restricted freedom as a member of the "Seguidores de Mello" group who had sent a critical letter to the leaders of the Young Communists' League expressing disagreement with the way the country was being governed;

(f) The Government's reply was transmitted to the source that submitted the communication in February 1992, but no response has yet been received;

(g) The Government has not accused the detainee of any act constituting violence or other act of this kind. It has merely stated that the penalty was "for the offence of other acts against State security", a charge so vague as not to justify detention. The information provided by the Special Representative as mentioned above points to the conclusion that the reason for Quintana's arrest might be the letter he sent to the Young Communists' League, an act which would constitute a legitimate exercise of his right to freedom of expression and opinion;

(h) In the absence of any further information, the Working Group takes it that Mr. Ortega has been at liberty since 3 January 1991;

(i) The methods of work adopted by the Working Group provide that if the person has been released, for whatever reason, since the Working Group took up the case, the case if filed. Although the Working Group at its third session reserved the right to decide on a case-by-case basis on the arbitrariness or otherwise of detention, the complete lack of information from the source does not allow it to do so in the present situation.

7. In the light of the above, the Working Group decides:

(a) The case of Carlos Ortega is filed since this person is at liberty;

(b) The detention of Jorge Quintana is declared to be arbitrary, being in contravention of articles 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the case submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Jorge Quintana to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

(See also annex II, Decision No. 29/1992.)

DECISION No. 30/1992 (CUBA)

(See also annex II, Decision No. 30/1992.)

DECISION No. 31/1992 (CUBA)

(See annex II, Decision No. 31/1992.)

DECISION No. 32/1992 (CUBA)

(See annex II, Decision No. 32/1992.)

DECISION No. 33/1992 (CUBA)

(Case pending for further investigation.)

DECISION No. 34/1992 (MEXICO)

(See annex II, Decision No. 34/1992.)

DECISION No. 35/1992 (UGANDA)

(See also annex II, Decision No. 35/1992.)

DECISION No. 36/1992 (ISRAEL)

Communication addressed to the Government of Israel on 31 January 1992.

Concerning: Dr. Rabah Hassan Abdul Aziz Mohana and Mahmoud Muhammad Muhammad Eid on the one hand and the State of Israel on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. In the case of Dr. Rabah Hassan Abdul Aziz Mohana the facts suggest that Israeli soldiers on 28 October 1991 arrested him, without a warrant, at the Military Headquarters in Gaza where he had attended a brief meeting at the request of the Civil Administration. The facts as alleged also reveal that Dr. Mohana was originally held in Kateba (Ansar II) Military Detention Centre in Gaza and was transferred to Ketziot Military Detention Centre in the Negev desert outside the Occupied Territories on 3 November 1991. From the facts alleged it is also learnt that Dr. Mohana is being accused by the authorities of being an active member of the outlawed Popular Front for the Liberation of Palestine.

6. In the case of Mahmoud Muhammad Muhammad Eid, he is said to be held at the Ketziot Military Detention Centre in the Negev desert on a one-year administrative detention order issued by a military commander on 17 March 1991. To date he has not been informed of the offences for which he has been accused.

7. In the light of the above, the Working Group decides:

(a) The detention of Dr. Rabah Hassan Abdul Aziz Mohana cannot be justified on any legal basis. It is declared to be arbitrary, being in

contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights to which Israel is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The detention of Mahmoud Muhammad Muhammad Eid cannot be justified on any legal basis. It is declared to be arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which Israel is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Dr. Rabah Hassan Abdul Aziz Mohana and Mahmoud Muhammad Muhammad Eid to be arbitrary, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 37/1992 (SUDAN)*

Communication addressed to the Government of the Sudan on 14 October 1991.

Concerning: Albino Akol Akol, Stanislaus Apping, Henri Chol Tong, Mirghani Babiker, Awad Salatin Darfur, Omar Ali Serabal, Mohamed Sayegh Hassan Yousif, Gordon Micah Kur, Professor Moses Macar, Professor Richard Hassan Kalam Sakit and Dr. Ahmed Osman Siraj on the one hand and the Republic of the Sudan on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same as in Decision No. 1/1992.)

---

* By note dated 7 December 1992, addressed to the Centre for Human Rights, the Permanent Mission of the Republic of the Sudan to the United Nations Office at Geneva informed the Working Group that "with regard to Decision No. 37/1992, Dr. Ahmed Osman Siraj has been released pursuant to Presidential Decree No. 306/92".

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Sudan. In the context of the information received from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto.

5. (a) In respect of Dr. Ahmed Osman Siraj, Head of the Psychology Department at the University of Khartoum and Cultural Secretary of the banned Sudan Medical Association, the Government has not responded to the allegations that Dr. Siraj is still being detained at Kober prison in Khartoum after his sentence to death was commuted to 15 years of prison. The Government has also not responded to the allegation that the trial of Dr. Siraj, culminating in the pronouncement of the death sentence, lasted only a few minutes and that at the time of the trial he was not allowed any legal representation, nor has he since been allowed to appeal to a higher court. In the absence of an appropriate response from the Government, the Working Group considers the allegations made in respect of Dr. Siraj to be correct;

(b) The Working Group also takes note of the fact that Mr. Stanislaus Apping and Henri Chol Tong have been charged by a court ruling and are awaiting sentence, to be carried after approval of sentence. The nature of the charge, however, has not been clarified. The Working Group is also not made aware of the authority which is to approve the sentence and the procedure in respect thereof;

(c) The Working Group has taken note of the fact that Albino Akol Akol, Mirghani Babiker, Awad Salatin Darfur, Omar Ali Serabal, Mohamed Sayegh Hassan Yousif, Gordan Micah Kur, Professor Moses Macar and Professor Richard Hassan Kalam Sakit are no longer in detention.

6. In the light of the above, the Working Group decides:

(a) The detention of Dr. Ahmed Osman Siraj and his continued detention cannot be justified on any legal basis. It is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, to which the Republic of the Sudan is a party, and falling within category II of the principles applicable in the consideration of cases submitted to the Working Group;

(b) To file the cases in respect of Stanislaus Apping and Henri Chol Tong without further action, unless fresh information is brought to the attention of the Working Group;

(c) To file the cases in respect of the detention of Albino Akol Akol, Mirghani Babiker, Awad Salatin Darfur, Omar Ali Serabal, Mohamed Sayegh Hassan Yousif, Gordan Micah Kur, Professor Moses Macar, and Professor Richard Hassan Kalam Sakit in the light of the fact that they are no longer in detention.

7. Consequent upon the decision of the Working Group declaring the detention of Dr. Ahmed Osman Siraj to be arbitrary, the Working Group requests the Republic of the Sudan to take the necessary steps to remedy the situation in

order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

(See also annex II, Decision No. 37/1992.)

DECISION No. 38/1992 (MOROCCO)

Communication addressed to the Government of the Kingdom of Morocco on 14 October 1991.

Concerning: Driss Achebrak, Abdallah Akaou, Kouin Amarouch, Abdellatif Belkebir, Hamid Bendourou, Abdelaziz Binbine, Ahmed Bouamlate, Ahmed Bouhiha, Abdelkrim Chaoui, Abdelaziz Daoudi, Dris Daroughi, Ahmed Elouafi, Mohamed el-Hafyaoui, Akka el-Majdoub, Mohamed Ghaloul, Mohamed Mansatte, Ahmed Marzak, Mohamed Moujahid, Ahmed Mzirek, Lahcen Oussayad, Ahmed Rajali, Abdelkrim Saoudi, Mouden Sefrioui, Bouchaib Skika on the one hand and the Government of the Kingdom of Morocco on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of the work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned on 17 February 1992 in respect of the above-mentioned communication.

3. (Same as in decision No. 1/1992.)

4. According to the communication submitted by the source, a summary of which was forwarded to the Government of Morocco, 61 soldiers, including those sentenced in 1972 by the military court of Kenitra for involvement in an attempt on the life of the King, were transferred in 1973 to the unofficial detention centre of Tazmamart. According to the source, three of them were sentenced to life imprisonment and the others to prison terms ranging from 3 to 20 years. According to the source, since 1973 these persons have been held incommunicado, without access to their lawyers or the right to receive visits from or communicate with their families, in inhuman conditions of detention. The source has supplied the names of 24 of these detainees, as well as the duration of their sentences, indicating that they continue to be detained beyond the expiry of their sentences. The names of these soldiers are given below.

5. While it appreciates the reply of the Government of Morocco dated 17 February 1991 as a positive sign of cooperation, the Working Group considers that this reply is limited to vague statements, since it merely indicates that "the cases of the soldiers imprisoned following the events of 1972 have been settled and all the soldiers who were imprisoned have been released". It is therefore incomplete and insufficient. The reply from the

Government of Morocco is limited to this general reference and indicates neither the names nor the number of the persons who have allegedly been released nor the date of their alleged release.

6. According to the source, the persons referred to above have been kept in detention beyond the expiry of their sentences and can be divided into three groups:

(a) Persons who have been released, including Abdelaziz Binbine, Ahmed Elouafi and Abdelaziz Daoudi;

(b) Kouin Amarouch and Hamid Bendourou, who died in detention;

(c) Others who are still in detention in a secret prison.

7. The Working Group is not in possession of all the facts, on the basis of which it could have taken a decision as to whether the detention of these persons was arbitrary or not, or resulted from serious violations of the rules regarding the right to a fair trial in respect of the judgements rendered against them.

8. The Working Group deemed it appropriate to transmit this information to the Special Rapporteur on the question of torture.

9. In the light of the allegations made, the Government's reply and the source's reactions to that reply, the Working Group believes, on the other hand, that it is in a position to take a decision regarding the detention of these persons beyond the expiry of their sentences.

10. In the light of the above, and without it being possible to draw any conclusion from the present decision as to the fairness or otherwise of the trial culminating in the sentences of imprisonment, the Working Group decides:

(a) The detention of Driss Achebrak, Abdallah Akaou, Abdellatif Belkebir, Ahmed Bouamlate, Ahmed Bouhiha, Abdelkrim Chaoui, Dris Daraoughi, Mohamed el-Hafyaoui, Akka el-Majdoub, Mohamed Ghaloul, Mohamed Mansatte, Ahmed Marzak, Mohamed Moujahid, Ahmed Mzirek, Lahcen Oussayad, Ahmed Rajali, Abdelkrim Saoudi, Mouden Sefrioui and Bouchaib Skika beyond the execution of their sentences is declared to be arbitrary as it manifestly cannot be justified on any legal basis and falls within category I of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) Regarding both the case of Kouin Amarouch and Hamid Bendourou, who allegedly died in prison, and the possible release of Abdelaziz Binbine, Ahmed Elouafi and Abdelaziz Daoudi, the Working Group considers any continuation of their detention beyond the expiry of their sentences to be arbitrary under category I of the principles applicable in the consideration of the cases submitted to the Working Group;

(c) The Working Group decides, furthermore, to transmit the information concerning the human and material conditions of the detention to the Special Rapporteur on the question of torture.

11. Consequent upon the decision of the Working Group declaring the detention of the persons mentioned above to be arbitrary, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation, in order to bring it into conformity with the norms and principles incorporated in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, to which Morocco is a party.

DECISION No. 39/1992 (MALAYSIA)

Communication addressed to the Government of Malaysia on 31 January 1992.

Concerning: Vincent Chung on the one hand and the Government of Malaysia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. According to the allegation by the source, the summary of which was forwarded by the Working Group to the Government of Malaysia in the form of the above-mentioned communication, Vincent Chung, aged 48, the administrator and personnel manager of Innoprise Foundation, a holding company of the Sabah Foundation, was arrested on 16 January 1991 by officers of the Karamunsing police at Karamunsing police station, Kota Kinabalu. According to the source, he was transferred to Kamunting Detention Centre, Taiping, Perak State, where he was held for involvement in a plot "to take Sabah out of the Federation of Malaysia". The source indicates that Vincent Chung is a well-known supporter of the Parti Bersatu Sabah, the United Sabah Party, a legal political party which currently forms the state government. According to the source, the accusation against Vincent Chung cannot be substantiated by any evidence by the federal authorities; he is being held in detention under section 8 of the Internal Security Act, which means that the opportunities for him to seek redress from the courts are extremely limited.

5. Bearing in mind the allegations made, the Working Group would have welcomed the cooperation of the Government of Malaysia. In the absence of any information from the Government, the Working Group believes that it is in a

position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

6. The facts submitted to the Working Group for its appreciation indicate that the arrest of Vincent Chung in January 1991 and his ensuing detention since then can be attributed solely to the fact that he exercised his right to express his opinions, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights, and his right to freedom of peaceful assembly and association, a right guaranteed by article 20 of the Universal Declaration of Human Rights and by articles 21 and 22 of the International Covenant on Civil and Political Rights.

7. Moreover, there is no indication that, by so doing, he had recourse to violence or threatened in any way national security, public order, public health or morals and the rights or reputation of others in the conditions set forth in article 29 (2) of the Universal Declaration of Human Rights and article 19 (3) of the International Covenant on Civil and Political Rights.

8. In the light of the foregoing, the Working Group decides as follows:

> The detention of Vincent Chung is declared to be arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and of articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable to the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Vincent Chung to be arbitrary, the Working Group requests the Government of Malaysia to take the necessary steps to remedy the situation, so as to comply with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 40/1992 (SAUDI ARABIA)

> Communication addressed to the Government of Saudi Arabia on 31 January 1992.
>
> Concerning: Mohammed al-Fassi on the one hand and the Government of Saudi Arabia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question.

With the expiration of more than ninety (90) days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. According to the allegation by the source, the summary of which was forwarded by the Working Group to the Government of Saudi Arabia in the form of the above-mentioned communication, Sheik Mohammed al-Fassi, aged 38, a Saudi Arabian businessman, was arrested on 2 October 1991 by members of the Jordanian security forces at the Intercontinental Hotel in Amman, Jordan, where he was visiting members of his family living in Amman. The source indicates that, on the same day, he was handed over to Saudi Arabian officials who had requested his extradition. According to the source, he was detained for four and a half months at a secret location in Riyadh, Saudi Arabia. The reason for his detention was his critical position towards the Government of Saudi Arabia during the Gulf war, according to the source which also indicates that Mohammed al-Fassi made statements in the press and on radio calling for reforms and for a democracy in Saudi Arabia. After the war, he is said by the source to have organized a fund to send humanitarian aid to Iraq. The source also indicates that his arrest was ordered by the Saudi Government and that no charges based on legislation have been brought against him.

5. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Saudi Arabia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

6. The facts submitted to the Working Group for its appreciation indicate that the arrest of Mohammed al-Fassi in October 1991 and his ensuing detention can be attributed to the fact that he exercised his right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

7. Moreover, there is no indication that, by so doing, he had recourse to violence or threatened in any way national security, public order, public health or morals and the rights or reputations of others in the conditions set forth in article 29 (2) of the Universal Declaration of Human Rights and article 19 (3) of the International Covenant on Civil and Political Rights.

8. In the light of the foregoing, the Working Group decides as follows:

> The detention of Mohammed al-Fassi is declared to be arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, articles 9 and 19 of the International Covenant on Civil and Political Rights, and Principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within category II of the principles applicable to the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Mohammed al-Fassi to be arbitrary, the Working Group requests the Government of Saudi Arabia to take the necessary steps to remedy the situation, so as to comply with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 41/1992 (CHILE)

(See annex II, Decision No. 41/1992.)

DECISION NO. 42/1992 (CUBA)

Communication addressed to the Government of Cuba on 8 April 1992.

Concerning: Sebastián Arcos Bergnes on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also notes with satisfaction the cooperation displayed by the Government of Cuba in the form of the oral explanations given by the Dean of the Law Faculty of Havana University, Dr. Julio Fernández Bultes, during its third session.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the United Nations Secretary-General, Mr. Rafael Rivas Posada, pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Sebastián Arcos Bergnes, Vice-Chairman of the Cuban Committee for Human Rights, was arrested, in Havana on 15 January 1992, together with two other individuals, who were subsequently released, because he was named by three persons accused of and tried for entering the country illegally, with whom the source maintains, he had no

association whatever. The persons tried for illegal entry into Cuba said that Arcos was a person who could be contacted in case of difficulty. It is alleged that, although he has a defence counsel, "he has had only limited access to him". It is further alleged that Arcos was arrested because of his activity as Vice-Chairman of the Committee and because he exercised his right to freedom of expression and association;

(b) According to the allegation, there have been violations in this case of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (although the State of Cuba is not a party to the latter instrument, its provisions form an integral part of the Working Group's mandate under Commission on Human Rights resolution 1991/42, as decided in deliberation 02, adopted by the Group on 23 March 1992, with a view to determining the arbitrariness or otherwise of detention) and principles 11, 18 and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(c) The Government of the Republic of Cuba has said that Arcos is, indeed, being detained and is being tried in criminal case No. 24 of 1992 for alleged crimes against State security and that his case is at the investigation stage, with all the guarantees provided for in Cuba's internal legislation. The Government does not specify facts which could justify his deprivation of liberty;

(d) The Special Representative of the United Nations Secretary-General, in the above mentioned report on the situation of Cuba, does not mention this situation;

(e) In the absence of any further information on the facts, the Working Group takes it that the only reason he is deprived of his freedom is his activity as Vice-Chairman of the Cuban Committee for Human Rights and the fact that he was named by the persons who were being tried for illegal entry into the country, which is considered according to the information supplied by the Government, as a suspected offence against State security;

(f) The deprivation of liberty on account of the legitimate exercise of the rights of association and of freedom of opinion and expression is regarded by the Working Group, in conformity with the principles mentioned in paragraph 3 of this decision, which were considered and approved by the Commission on Human Rights, as reflected in resolution 1992/28, as arbitrary detention falling within category II.

7. In the light of the above, the Working Group decides:

> The detention of Sebastián Arcos Bergnes is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable to the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Sebastián Arcos to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 44/1992 (CUBA)

Communication addressed to the Government of Cuba on 8 April 1992.

Concerning: María Elena Cruz Varela on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also notes with satisfaction the cooperation displayed by the Government of Cuba in the form of the oral explanations given by the Dean of the Law Faculty of Havana University, Dr. Julio Fernández Bultes, during its third session.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the United Nations Secretary-General, Mr. Rivas Posada, pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27). It has also considered the interim report submitted to the United Nations General Assembly by Mr. Carl-Johan Groth, Special Rapporteur on the situation of human rights in Cuba (A/47/625).

6. The Working Group considers that:

(a) According to the allegation, María Elena Cruz Varela, a writer and the President of the dissident group Criterio Alternativo was detained and released on 19 November 1991, and arrested again on 21 November 1991 at her home, during the course of an "act of repudiation", by agents of the National Revolutionary Police. Seven days later, she was sentenced by the Havana Municipal Court and the sentence was upheld by the People's Provincial Court of Havana on 4 December 1991;

(b) According to the allegation, the sentence was handed down in the course of a trial where she was unable to consult any legal counsel. It is further alleged that the detainee is a member of Concertación Democrática Cubana, and that during the days before her detention she had taken part in several peaceful initiatives organized by dissident groups;

(c) According to the allegation, there have been violations of the rights protected by articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (although the State of Cuba is not a party to the latter instrument, its provisions form an integral part of the Working Group's mandate pursuant to Commission on Human Rights resolution 1991/42, as decided in deliberation 02, adopted by the Group on 23 March 1992, with a view to determining the arbitrariness or otherwise of detention) and principles 11, 18 and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(d) The Government of Cuba has maintained:

(i) As to the facts, that María Elena Cruz Varela "was punished with two years' deprivation of freedom for proven crimes of unlawful association and production of clandestine printed matter in case No. 4180 of 1991. She is currently serving the sentence imposed on her in respect of that case". The reply does not indicate the facts constituting the association characterized as unlawful or those which would constitute the crime of "production of clandestine printed matter". Regarding the trial, the Government maintains that "during each stage of the proceedings, all the procedural guarantees established in the current penal procedural legislation were respected";

(ii) The Government of the Republic of Cuba considers that the mandate of the Working Group on Arbitrary Detention, as is clear both from the mandate of resolution 1991/42 and the background to its establishment, as well as the terms of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, excludes the consideration of any possible arbitrariness in cases of imprisonment, i.e. deprivation of liberty, resulting from an enforceable judgement;

(e) The Special Representative of the United Nations Secretary-General, in the above-mentioned report on the situation of human rights in Cuba, states that, according to his information, Mrs. Cruz is a writer who was expelled from the official artists' and writers' union, namely the Union of Writers and Artists of Cuba, in February 1991. He further states that on the same day that the official newspaper of the Communist Party characterized her as an "inexperienced writer", members of the Committee for the Defence of the Revolution warned her to leave the country. He maintains that she was detained under the circumstances and on the dates indicated in the allegation, that she was tried and accused of unlawful association and that she was reportedly not allowed to appoint a lawyer. The hearing of the case was said

to have lasted approximately four hours and Mrs. Cruz was reportedly sentenced to two years' imprisonment. The report which the Special Rapporteur submitted to the General Assembly at its forty-seventh session refers only in the annex to Mrs. Cruz Varela as having been detained in September 1992;

(f) The Working Group concludes from the foregoing that María Elena Cruz Varela has been deprived of her freedom for having legitimately exercised the right of association in her capacity as a member of the dissident group Criterio Alternativo, which is part of the Concertación Democrática Cubana. This fact is not denied by the report of the Government, which indeed states that one of the grounds for her conviction is her membership of an association which it characterizes as illegal. Furthermore, and for lack of more information, it is to be inferred that the documents mentioned in the allegation which were submitted to the Fourth Congress of the Communist Party and the Declaration of the Cuban Intellectuals referred to in the report of the Special Representative were the facts constituting the offence of "production of clandestine printed matter";

(g) The deprivation of freedom for the legitimate exercise of the rights of association and of freedom of opinion and expression is regarded by the Working Group, in accordance with the principles referred to in paragraph 3 of this decision, and considered and adopted by the Commission on Human Rights, as reflected in resolution 1992/28, as arbitrary detention falling within category II;

(h) The Cuban Government maintains that, during the trial of Mrs. Cruz, all the procedural guarantees established in the current legislation in Cuba were respected, although it makes no mention of the guarantees established in the Universal Declaration of Human Rights and the relevant international legal instruments accepted by States among which, pursuant to deliberation 02 of the Working Group, should be included in the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment. Article 11 of the Universal Declaration of Human Rights demands a public trial with "all the guarantees necessary for his [the accused's] defence", while article 14 of the International Covenant on Civil and Political Rights adds further safeguards, stipulating that "adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" should be provided to the accused and that he should be informed of the right to have legal assistance and of his right to choose it;

(i) It is an unchallenged fact that only seven days elapsed between the deprivation of freedom and the trial, and consequently both the source and the Special Representative maintain that she would not have been able to consult a lawyer, a fact which is not disputed by the Government;

(j) In any case, because of the lack of more information as to the actual procedure followed in the trial the Working Group cannot be convinced that the shortcomings referred to are "so serious" as to constitute a case of arbitrary deprivation of freedom falling within category III, as mentioned in paragraph 3 of this decision;

(k) It remains to be determined whether the Working Group's mandate is restricted to cases of deprivation of freedom prior to trial (or detention properly speaking, according to the opinion of the Government of Cuba) or whether it also includes those cases of deprivation of freedom which are the result of an enforceable judgement (or imprisonment, according to the Government itself);

(l) As the Government argues, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment does, indeed, make a distinction between the expressions "detention" and "detained person" on the one hand and "imprisonment" and "imprisoned person" on the other, depending on whether the person has already been tried (the second case) or not (the first case). From this distinction, it is to be inferred that the Working Group's mandate is restricted only to determining a possible arbitrariness in respect of persons who have not been tried;

(m) The Working Group, in its deliberation 03, adopted at its third session, and amended at its fifth session, decided - for the reasons given in its texts, which form an integral part of this decision - that its mandate includes all forms of deprivation of freedom, whether administrative, judicial, prior or consequent to a trial;

(n) Furthermore, the expression "detention" (detención) used in resolution 1991/42 which established the Working Group, should also be construed as including arrest without trial, prior to or during the preparatory stage of the trial or else following or consequent to the trial. The same should be said regarding the expression "imprisonment" (prisión). This can be seen from an analysis of the Constitutions of the Latin American countries:

(i) Reference is made to "prisión" as deprivation of freedom prior to trial in the Constitution of Paraguay of 1992, article 19 of which speaks of "prisión preventiva" (preventive imprisonment); the Constitution of Peru of 1979 which prevents parliamentarians from being "procesados ni presos" (tried or imprisoned) without authorization, an obvious reference to preventive arrest; articles 15 and 17 of the Constitution of Uruguay, which refer to "preso" and "prisión preventiva" (prisoner and preventive imprisonment); articles 6, 9, 10 and 13 of the Constitution of Guatemala of 1985; article 2 (a) and (b) of the Constitution of the Dominican Republic of 1966, which states that any person arrested "se elevará a prisión" (shall be imprisoned) within 48 hours of being brought to trial; articles 92 and 93 of the Constitution of the Republic of Honduras of 1982, which refers to "auto de prisión" (imprisonment order) for a person who is charged; articles 18 and 19 of the Constitution of Mexico of 1917, which refer to "prisión preventiva y auto de prisión" (preventive imprisonment and imprisonment order); article 11 of the Constitution of Bolivia of 1967, which refers to "encargados de las prisiones a la que se lleva a los encausados" (the persons in charge of the prisons to which the accused are taken); article 19, paragraph 7 of the

Constitution of Chile, which refers to "encargados de las prisiones y prisión preventiva" (the persons in charge of the prisons and preventive imprisonment); and the Constitution of Brazil of 1988, which includes a similar reference to imprisonment (arts. 5 LXI, LXII, LXIII, LXIV, LXV, LXVI and LXVII);

(ii) On the contrary, article 176 of the Constitution of Peru; article 60, paragraph 6 of the Constitution of Venezuela; article 33, paragraphs 2 and 3 of the Constitution of Nicaragua; article 28 of the Constitution of Panama (which refers on three occasions to "los detenidos" (detainees) who are subjected to the prison system); article 18 of the Argentine Constitution of 1853, which provides that "las cárceles serán ... para seguridad y no para el castigo de los detenidos en ellas" (the prisons shall be ... for security and not for the punishment of the detainees held in them) all use the expression "detenido" (detainee) as being synonymous with "penado" (convict);

(iii) In referring to the same penalty, the deprivation of freedom on account of debt, the Constitutions of Ecuador, Costa Rica and Peru use the expression "prisión por deudas" (imprisonment for debt); the Constitution of Nicaragua refers to "detención por deudas" (detention for debt); other Constitutions speak of arrest for debt; and still others use two or three of these expressions (Honduras, Panama and Colombia);

(o) Lastly, Joaquín Escriche's Diccionario Razonado de Legislación y Jurisprudencia, refers to "arresto" (arrest) as being synonymous with "prisión" (imprisonment) maintaining that "according to the Diccionario de la Lengua Castellana, arresto (arrest) is the same as prisión (imprisonment) and therefore means not only the act of taking, seizing or apprehending a person but also the place in which he is confined or secured"; "prisión" (imprisonment) [is] the act of taking, seizing or apprehending a person, thereby depriving him of his freedom"; and "detención" (detention) is mentioned only in the entry "detención arbitraria: véase arrestar" (arbitrary detention: see "to arrest") - hence the conclusion that there is similarity among the concepts of "arresto", "prisión" and "detención".

7. In the light of the above, the Working Group decides:

The detention of María Elena Cruz Varela is declared to be arbitrary, being in contravention of articles 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 48/1992 (BURUNDI)

Communication addressed to the Government of the Republic of Burundi on 8 April 1992.

Concerning: Emile Ruvyiro on the one hand and the Republic of Burundi on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of ninety (90) days from the transmittal of the case by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Burundi. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It is alleged in the communication from the source that Emile Ruvyiro, a 40-year-old peasant, was arrested at his home in the commune of Rugazi, province of Bubanza, by several dozen soldiers and about a dozen police officers. The arrest warrant was issued by the prosecutor in Bubanza. According to the source, the arrest was due to the fact that, at a public meeting in 1990, Emile Ruvyiro allegedly spoke on the issue of the confiscation, by the prosecutor in Bubanza, the Commander of the barracks in Muzinda and other officials, of land occupied by 360 peasants. Mr. Ruvyiro was charged with endangering State security and incitement to ethnic hatred. He is allegedly still being held in Bubanza prison. According to the source, Emile Ruvyiro, who is represented by a lawyer, has appeared in court five times since his arrest. His latest appearance was in 1991. Each time the trial was postponed at the request of the prosecutor. In addition, after

failing to gather sufficient evidence against Emile Ruvyiro, the prosecutor is said to have threatened a witness with prison if he refused to testify against Mr. Ruvyiro.

6. It is clear from the facts as reported that Emile Ruvyiro has been kept in detention since 16 March 1991 solely because he peacefully exercised his right to freedom of opinion and expression, which implies the right not to be bothered because of his opinions, by publicly denouncing the confiscation by the authorities of the province of Bubanza of land belonging to 360 peasants. This right is guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

7. In the light of the above, the Working Group decides:

> The detention of Emile Ruvyiro is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon its decision declaring the detention of Emile Ruvyiro to be arbitrary, the Working Group requests the Government of the Republic of Burundi to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 49/1992 (LAO PEOPLE'S DEMOCRATIC REPUBLIC)

Communication addressed to the Government of the Lao People's Democratic Republic on 3 February 1992.

Concerning: Patrick Khamphan Pradith on the one hand and the Lao People's Democratic Republic on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days from the transmittal of the case by the Working Group it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Lao Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. It is alleged in the communication from the source that Patrick Khamphan Pradith, born in 1934, Vice-Governor of the province of Luang Prabang under the former Royal Government of National Unity, was arrested in 1975, following the establishment of the Lao People's Democratic Republic. It is alleged that, at that time, the new Government announced that all civilian officials and military personnel who had worked for the former Government should attend political re-education classes if they wished to be employed by the new Government. Reportedly, most officials attended of their own free will, but those who did not were arrested. According to the source, it is not known whether Patrick Khamphan Pradith attended of his own accord or whether he was arrested. Patrick Khamphan Pradith is said to have been detained since 1975 without charge or trial in 12 re-education camps or prisons. He is said to be currently held in the re-education camp at Soppane, province of Houa Phan, where, according to the source, prisoners are given permission to go out during the day and to travel within the province.

6. It is clear from the facts as reported that Patrick Khamphan Pradith has been held in detention since 1975 without charge or trial, solely for the purpose of political re-education, following the establishment of the Lao People's Democratic Republic; that, in principle, the basic aim of such political re-education is to induce the person who undergoes it to change views; and that, because of the objectives it pursues, it thus appears to be contrary to the right guaranteed by article 19 of the Universal Declaration of Human Rights and by articles 18 (2) and 19 of the International Covenant on Civil and Political Rights. It should also be noted that the Working Group sent a message to the Government concerning Patrick Khamphan Pradith, urgently appealing to the Government to ensure that Mr. Khamphan Pradith receives the necessary medical care and to guarantee his right to physical integrity. The Government has not responded to this appeal.

7. In the light of the above, the Working Group decides:

> The detention of Patrick Khamphan is declared to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and articles 18 (2) and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Patrick Khamphan Pradith to be arbitrary, the Working Group requests the Government of the Lao People's Democratic Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.